Arguments concluded & reserved for Judgment : 20.1.06

Judgment pronounced on: 2.2.2006

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4494 of 2003 with SPECIAL CIVIL APPLICATION NOS. 4502, 4558, 4602, 4603, 4604, 4605, 4606 OF 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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PARMAR DIPUBHAI B & 10 - Petitioner(s)
Versus
REGISTRAQR OF CO-OPERATIVE SOCIETIES&3- Respondent(s)

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Appearance :
Mr. Tushar Mehta with Mr. Devang Vyas and Mr. Paresh Upadhyay for Petitioners in this group of

petitions. Mr. AD Oza, GP with Mr. Mukesh Patel AGP for Respondent(s) : 1 and 4.
MR GM JOSHI for Respondent(s) : 2.
MR AJ YAGNIK for Respondent(s) : 3.
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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 2/02/2006

C.A.V. **JUDGMENT**

1. Heard learned advocate Mr. Tushar Mehta, Mr. Paresh Upadhyay and Devang Vyas on behalf of petitioners. Heard learned advocate Mr. Gautam Joshi for GUJCOMASOL, Shri A.J. Yagnik for respondent No.3 GUJCOMASOL Staff Association and learned GP Shri A.D. Oza with learned AGP Shri Mukesh Patel on behalf of Registrar of Cooperative Societies and Shri D.P. Joshi, Joint Registrar, Respondents No.1 and 4.

2. In this group of petitions, petitioners have challenged order passed by respondent no.1 dated 28th February, 2003/3rd March, 2003 and

retrenchment notices issued by respondent No.2 dated 22nd March, 2003. According to petitioners, order passed by Registrar, Cooperative Societies is having effect of terminating services of 161 employees including petitioners. Same challenge is made by petitioners in this group of petitions pursuant to notice of retrenchment received by them from respondent no.2 on the basis of the order of Registrar, Cooperative Societies dated 28th February, 2003/3rd March, 2003.

3. According to the petitioners,as a consequence of the order of Registrar, Cooperative Societies, respondent No.2 has already issued retrenchment notice dated 22nd March, 2003 having effect of termination of their services.

4. According to petitioners, respondent No.2 is a cooperative society duly registered under the provisions of the Gujarat Cooperative Housing Societies Act, 1961. Respondent No.2 society is

an autonomous body having right of self governance and is supposed to function in accordance with the provisions of the Act with a view to achieve objects mentioned in its bye laws. Final authority in cooperative societies including respondent No.2 vests in the general body of the Society as per section 73 of the Act who elects managing Committee. Management of every society vests in the committee constituted in accordance with the Act, the Rules and the bye laws under section 74 of the said Act. SO far as the question of recruitment of staff by cooperative society is concerned under Statute, Gujarat Cooperative Societies Act, 1961, section 76 thereof provides to the effect that the qualification and other conditions of service of officers and employees of society may be such as may from time to time be prescribed. State Government has not framed any rules prescribing mode of recruitment, qualification or other conditions of service, therefore, it is for

managing committee of each cooperative society to make recruitment of staff considering exigencies of work. Accordingly, managing Committee of respondent no.2 society made recruitment of petitioners after following procedure of holding interview etc. Petitioners have been working approximately since November, 2000 Respondent NO.3 is association which filed Special Civil Application No. 6042 of 2002 in collusion with respondent NO.2 with the sole object of removing present petitioners. Said petition came to be disposed of by this Hon'ble Court (Coram : Hon'ble Mr. Justice Akshay Mehta) on 16th July, 2002 wherein this Court directed Registrar, Cooperative Societies to decide representation which may be made by respondent No.3 Association after hearing affected employees namely petitioners. This Court also kept open the question regarding jurisdiction of the Registrar, Cooperative Societies to be agitated upon before him. As per directions issued by this Court by

order dated 16.7.2002, such representation was to be decided within three months. Respondent No.4 Joint Registrar who heard the matter issued notice at the fag end of said period of three months on 25.10.2002 and hearing was fixed on 28th October, 29th October, 30th October 2002. According to petitioners, many of petitioners have not received notices as the notices were sought to be served through respondent No.2. Thereafter, respondent No.1 suddenly passed order. It is the contention of petitioners that the order is passed by Respondent No.1 Shri Prakash Shah, Registrar of Cooperative Societies but the matter was heard by Joint Registrar Shri D.P. Joshi. Registrar, Cooperative Societies is ex officio member of Board of Directors/Managing Committee of respondent NO.2 society and in all proceedings of meeting of managing committee including wherein petitioners were appointed. According to petitioners, Registrar, Cooperative Societies was present and has not objected to the

resolutions which were passed there. According to petitioners, Registrar, Cooperative Societies, who is a member of managing committee of respondent No.2 society cannot act as a Judge in his own cause and cannot issue instruction to respondent no.2 to terminate services of petitioners. Order passed by Registrar, Cooperative Societies is violative of the principles of natural justice and the notices issued by Joint Registrar on 25th October, 2002 for hearing started from 28th October, 2002 in case of some 17 persons, on 29th October, 2002 in case of some of the petitioners and Joint Registrar wants to complete hearing and to conclude matter within three months, therefore, he has hurriedly concluded hearing and submitted report to Registrar. According to petitioners, this order is passed by Registrar, Cooperative Societies in purported exercise of powers under section 160 of the Gujarat Cooperative Societies Act, 1961 and said order is beyond the scope and

purview of the said provisions and the Registrar, Cooperative Societies has no competence or authority or power under section 160 of Act to direct respondent No.2 to terminate service of petitioners. Said order is also passed without considering mandatory provisions of the ID Act, 1947 and, therefore, said order passed by Registrar, Cooperative Societies is illegal and void, ab initio, arbitrary and contrary to the provisions of the Societies Act as well as the Industrial Disputes Act, 1947, violative of the principles of natural justice and, therefore, same is liable to be quashed.

5. On behalf of respondent No.1, affidavit in reply is filed by one M.J. Parmar, Deputy Registrar which is at page 65 of Special Civil Application No. 4494 of 2003 which is considered to be main matter in this group of petitions. This affidavit in reply was filed on 26.8.2003. Thereafter, another affidavit in reply is filed

by one A.B. Patel, Deputy Registrar, Consumers, on behalf of respondent No.1 which is at page 70 on 17th January, 2006. Then, affidavit in rejoinder filed on behalf of respondent no.3 through Maheshbhai R. Patel, office bearer of respondent No.3 Association is at page 83 which is dated 13th January, 2006 along with which, bye laws and representations are annexed. Further affidavit in reply is filed by respondent no.3 through Maheshbhai Patel on 17.1.2006 along with correspondence of staff association with respondent NO.2. Respondent No.3 has also produced annual report of respondent No.2 from 2000-2001 to 2003-2004. Respondent NO.1 has filed third affidavit of Mohanlal Jethabhai Paramar, present District Registrar, Cooperative Societies, Rajkot on 18.1.2006. Learned advocate Mr. Tushar Mehta has submitted written submissions on behalf of petitioners. Except that, no affidavit in reply or rejoinder is filed by either parties on record. Respondent no.2

society has not filed any reply against present petition but oral submissions have been made on behalf of respondent no.2 by learned advocate Mr.G.M. Joshi

6. In affidavit in reply filed on behalf of respondent no.1 by Shri M.J. Parmar, Deputy Registrar, Consumer Cooperative Society, Gujarat State, averments, allegations and submissions made by petitioners in their petitions have been denied and not admitted. It is averred that in view of the order passed by this Court in Special Civil Application NO. 6042 of 2002 dated 16th July, 2002, representation of respondent no.3 has been examined by Registrar after giving opportunity of hearing to affected employees. It is also alleged in reply that the registrar is a Board Member but he was not a member of staff sub committee which was appointed for recruitment of petitioners. Appointments made by respondent No.2 are not economically sustainable as respondent

no.2 has been incurring aggregated heavy losses in 1999-2000 to 2001-2002. Representations made by affected employees were considered by Joint Registrar. Affected employees were given sufficient opportunity to represent their individual cases. Registrar has taken administrative decision after considering all representations of affected employees and facts of case. Order of Registrar, Cooperative Societies is in financial interest of respondent NO.2 as well as long term public interest of societies associated with respondent no.2 as well as other farmer members. Respondent NO.2 has not considered requirement of specific number of employees for specific post. Respondent No.2 has not given wide publicity by advertisement for vacancies. Order is passed by Registrar, Cooperative Societies as per the directions issued by this Court and not under section 160 of the Act. In second affidavit in reply filed by AB Patel on behalf of respondent NO.1, same things

have been reiterated and further, it is alleged that earlier, as per the order of this Court (Coram : S.K. Keshote,J.) in Special Civil Application NO. 3028 of 1999 dated 15th August, 1999, directions were issued by Registrar to retrench 57 employees and also it was directed to take decision with regard to recruitment of staff and procedure by order dated 31st December, 1999. It is alleged by respondent no.1 that the said order was accepted by respondent no.2 and pursuant to said order, 57 employees were retrenched by respondent no.2 but further direction with regard to procedure and framing of recruitment rules have not been complied with by respondent no.2. In second paragraph of said affidavit, it is made clear that in affidavit in reply filed earlier by Shri M.J. Parmar, through mistake, it has been stated that the order in question has been passed as per the directions of this Court and not under section 160 of the Act. It is therefore clarified that looking to the

order of this Court and also looking to the facts of case, it is clear that the order has been passed by Registrar considering directions of this Court and also in exercise of power under section 160 of Act. In affidavit in reply filed by Mohanbhai Jethabhai Parmar on behalf of respondent No.1, it is further clarified that due to misconception and inadvertence it is stated by him that order is not passed by Registrar under section 160 of the Act. He further supported the earlier affidavit of AB Patel which is completely based on record and reflects correct position. In short, he supported affidavit of Shri AB Patel with clarification that it was pointed out through misconception and inadvertence that the Registrar has not exercised powers under section 160 of the Act.

7. In affidavit in reply filed on behalf of respondent No.3 by Mahesh Ratilal Patel which is at page 83, it is inter alia alleged that the

petition under Article 226 is not maintainable; petitioner is having alternative remedy under the Industrial Disputes Act,1947 and petitioners were appointed by way of back door entry without following due process of law. Petitioners are relatives of members of Directors and Managing Directors, therefore, no independent recruitment is made by respondent no.2 by following legal procedure. It is also alleged that respondent NO.2 is a society and it being a private body, petition challenging contractual right is not maintainable as respondent No.2 is not a State or other authority of State within the meaning of Article 12 of Constitution of India. In its affidavit, respondent no.3 has emphasized that appointments of petitioner are without following any process of law and are back door entry in service due to favoritism and nepotism, therefore, initially such type of appointments were challenged before this Court by filing special civil application no. 3028 of 1999 and in

view of the order of this Court (Coram : S.K.Keshote,J.) dated 15.8.1999, representation was decided by Registrar, Cooperative Society and ultimately respondent no.2 retrenched service of 65 employees by canceling their appointments. Directions were issued by respondent NO.1 to respondent no.2 to cancel appointment of such 65 employees on 31st December, 1999 and at that time, Registrar Cooperative Societies had directed respondent no.2 to frame service bye laws and got them approved and not to make further appointments without issuing advertisements and without calling names of eligible candidates from the employment exchange under appropriate legislation. Respondent No.2 has not framed such rules and regulations and direction issued by respondent no.1 were not complied with by respondent NO.2. In second occasion, same type of directions were issued by this Court in Special Civil Application No. 6042 of 2002 by order dated 16th July, 2002. This Court directed the

Registrar, Cooperative Societies to decide representation of association after hearing affected parties and liberty was reserved to raise all contentions including that of jurisdiction of respondent NO.1 Registrar to decide such issue. Accordingly, Registrar, Cooperative Societies decided representation but came to conclusion that appointments of petitioners are illegal and contrary to rules and, therefore, directed respondent NO.2 to terminate services of such 161 employees. According to respondent no.3, such action is within competence and power of respondent no.1 and he is having authority in law to issue such directions under section 160 of the Act. Respondent No.2 is performing public functions, therefore, Article 14 is applicable though respondent NO.2 is not a "State" within the meaning of Article 12 of Constitution. When this Court passed order on special civil application no. 6042 of 2002 on 16th July, 2002, all

petitioners were represented by lawyer. At that time, as regards jurisdiction, no contention was raised by petitioners who were represented by their lawyer. According to respondent NO.3, Registrar is having power of superintendence under section 160 of the Act, over the activities of cooperative societies registered under the Act and to issue necessary directions from time to time for the purposes stated in section 160 of the Act. Respondent NO.2 has not taken care while creating additional burden by employing 161 employees and such appointments of 161 employees have been made without following due process of law according to respondent no.3. It is also alleged by respondent No.3 in its reply that it is nothing but fatal discrimination by body involved in public functions, therefore, it is unfair, unreasonable arbitrary and discriminatory. Along with affidavit in reply of respondent No.3, copies of annual report for the year 2000-2001, 2001-2002 and 2003-2004 are

produced. According to respondent no.3, respondent no.2 has incurred heavy losses of more than five crores since 2000-2001 and onwards. Such losses are continuing from year to year.

8. Thereafter, advocates for the parties have made their oral submissions in support of their pleadings. Learned advocate Mr. Paresh Upadhyay has submitted that respondent No.1 Registrar of Cooperative Societies has no jurisdiction to examine such issue which is relating to service conditions of petitioners under section 160 of the Act. He also submitted that Registrar directed Joint Registrar, Commerce to hear respective parties as per the directions issued by this Court in SCA No. 6042 of 2002 by order dated 16th July, 2002. By order dated 16th July, 2002, it was directed that in the event of the respondent no.3 making representation to the Registrar, Registrar shall decide same within three months from the date of receipt of such

representation and, therefore, according to him, it was the duty of respondent no.1 to completely comply with the direction of this Court and he cannot delegate this function to his subordinate officer and, therefore, by delegating the task of hearing the affected parties, Registrar of Cooperative Societies has committed breach of the directions of this Court and the delegation of such powers to Joint Registrar by Registrar, Cooperative Societies is totally contrary to the directions of this Court and provisions of Act. He also submitted that Joint Registrar, Commerce has no jurisdiction to hear objection of respective parties under section 160 of the Act, therefore, whole proceedings initiated by Joint Registrar on the basis of delegation of power by Registrar, Cooperative Societies is contrary to the directions issued by this Court and is also contrary to the provisions of the Gujarat Cooperative Societies Act, 1961. He also submitted that show cause notices were issued by

Joint Registrar, Commerce on 25th October, 2002 calling explanation from respective parties to show cause why order under section 160 of the Act should not be passed. He also submits that along with such show cause notices, copy of representation made by Respondent No.3 association was not supplied to the affected parties and therefore, affected parties against whom order was sought to be made under section 160 of the Act were deprived of their right to make effective representation. It caused great prejudice to petitioners, not getting fair opportunity. Therefore, it is violative of the principles of natural justice. He also submitted that the order was passed by this Court on 16.7.2002 directing the respondent No.1 to decide representation that may be made within three months from the date of receipt of such representation. Pursuant to such direction, respondent No.3 made such representation through its Chairman Arvind A. Patel on 1st August, 2002

which is at page 173. Thereafter, respondent No.1 remained silent upto 25th October, 2005 since no actions were initiated by him as a consequence of representation made by respondent no.3 on 1st August, 2002. Thereafter, pursuant to delegation of power by respondent no.1, respondent no.4 issued show cause notice dated 25th October, 2002 but along with such notice to show cause, copy of representation of respondent no.3 dated 1st August, 2002 was not supplied. According to Mr. Upadhyay, after remaining in slumber upto 25th October, 2002, respondent No.4, at the instance of respondent no.1, completed proceedings in hurried manner which ultimately resulted in gross violation of the principles of natural justice because petitioners were not given reasonable and effective opportunity of hearing to make submissions against such representation. Hearing was completed between 29th October, 2002 to 14th November, 2002 during which Diwali Vacation was

intervening, therefore, respondent no.4 hurriedly, without giving reasonable opportunity to petitioners, completed hearing because three months' time prescribed by this Court was coming to an end. When Registrar, Cooperative Societies and Joint Registrar both were having sufficient time after receiving representation dated 1st August, 2002 from respondent NO.3 Association, then, why almost three months, both the authorities remained silent and why no action whatsoever was initiated upon representation of respondent NO.3 upto 25th October, 2002? Therefore, there was intentional delay and lapse on the part of said respondents with pre determined mind and, therefore, order passed by respondent No.1 is mala fide and vindictive in nature. He also submitted that after concluding hearing by Joint Registrar, Commerce submitted report to Registrar, Cooperative Societies and based upon such report submitted by Joint Registrar, Commerce, Registrar, Cooperative

Societies took decision. Thus, authority hearing the matter and the authority deciding matter both are different and, therefore, authority taking decision should have first supplied copy of the report of Joint Registrar to the persons who were likely to be affected adversely and should have invited their representation against the report submitted by the Joint Registrar before taking decision on the basis of such report. However, copy of such report of Joint Registrar was not supplied to the petitioners by the Registrar, Cooperative Societies and without supplying such copy and without inviting their representation/objections on such report, Registrar Cooperative Societies took decision in the matter which is also violative of the principles of natural justice. Thus, according to the submissions made by learned advocate Mr. Paresh Upadhyay, order of respondent No.1 is bad in law and contrary to the principles of natural justice and it is also without jurisdiction. He

also submitted that the reasonable opportunity was denied under the pretext of court direction wherein specific time limit was fixed. He also raised contention that as per section 96of the Act, Registrar is having jurisdiction to decide dispute as a quasi judicial authority even though apex court has taken view in number of cases that the question or dispute relating to service conditions of employees is not within the jurisdiction of Registrar and Registrar has no jurisdiction to decide any dispute between societies and its employees relating to service conditions and for that, machinery under the Industrial Law is required to be resorted to. Therefore, he submits that according to the scheme under the Gujarat Cooperative Societies Act, 1961, when the Registrar has no jurisdiction to decide dispute between society and its employees, then, on what basis registrar has got power under section 160 of the Act to decide dispute about validity of appointment of

employees made by society ? He submits that section 160 of the Act for limited purpose having supervision for maintenance, proper management and affairs of the society but it is not relating to dispute which has to be examined by the Registrar under the said provisions. Therefore, he emphasized that the Registrar has no jurisdiction to act under section 160 and, therefore, order passed by Registrar, Cooperative Societies is without jurisdiction and contrary to the provisions of the Act. He also submitted that since the retrenchment notices is the consequence of the order of Registrar, Cooperative Societies, therefore, present petitions challenging the order of Registrar, Cooperative Societies in substance and the retrenchment notices as a consequence of that order, are maintainable and, therefore, it is not a petition against private party/body relating to contractual relations between the society and its employees but the matter is relating to the order of respondent

No.1, therefore, petitions are maintainable since petitioners are not having any other alternative equally efficacious remedy against the order of Registrar, Cooperative Societies, 1961.

9. Learned advocate Mr.Gautam Joshi appearing for Respondent No. 2 has almost supported submissions made by the learned advocate Mr. Paresh Upadhyay and has emphasized that the society is not having any service bye laws of its own. He also submits that the State Government has not framed any rules under the Act relating to service conditions of the employees of society. He also submits that in absence of recruitment rules which have not framed by society as well as the State Government, respondent NO.2 has followed proper procedure for recruiting concerned petitioners. He submits that there is no mal practice adopted by respondent no.2. He also submits that according to qualification fixed by sub committee, persons were selected and it is

the right of the society to select particular employee of their choice and confidence of respondent no.2 and, therefore, there is no any illegality committed by respondent NO.2 in giving appointment to petitioners after following due process of selection by sub committee and appointed by society. He submits that there is no loss caused to society due to appointment of such petitioners. He also submits that after selection, concerned committee has approved selection and in each category, qualification has been fixed by the society and in some technical post, advertisement were issued and accordingly, interviews were held and thereafter, proper selection has been made. He also submits that since last seven years, in all 179 employees retired from society and against them, only 161 employees were recruited and as a consequence thereof, financial burden of the society has been reduced to the tune of Rs.139 lacs. He submits that during the last seven years, number of

employees in society have been retired, strength of number of employees in society has been reduced and in annual turn over, there is increase of Rs.334 crores, therefore, he submits that it is a right of the society to select employees as per their requirement and as per their confidence upon such employees. He submits that it is the internal management affairs of the society for which Registrar, Cooperative Society has no jurisdiction to interfere under section 160 of the Act. He also emphasized that in entire order of Registrar, he has nowhere clarified that it has been passed by him under section 160 of the Act. He also submitted that Respondent No.1 was specifically directed by this Court to decide the question of jurisdiction but the same was not at all examined or decided by respondent NO. 1 though such question was in terms raised by petitioners and respondent No.2. Therefore, order of registrar is not in compliance of the directions of this Court and is passed without

jurisdiction. According to his submission, there is no other provision in law which would give power or authority to interfere with the internal management affairs of the society. He also submits that respondent No.2 has issued notices of retrenchment only on the basis of the order of respondent no.1 and if the order of respondent No.1 is excluded, then, respondent No.2 has no cause to issue such retrenchment notices and, therefore, this Court has to examine legality, validity and propriety of the order of Registrar before examining the legality of the retrenchment since the same have not been issued independently by respondent No.2. Learned advocate Mr. Joshi has also submitted that this Court has not directed respondent No.1 to pass such type of orders but this Court directed to decide representation and to pass appropriate orders and that does not mean that the Registrar, Cooperative Societies should direct respondent No.2 to terminate services of 161 employees.

Therefore, directions issued by respondent No.1 to respondent No.2 is clearly beyond the scope and ambit of section 160 of Act as well as order of this Court. He also submitted that in first affidavit filed on behalf of respondent no.1, it is alleged that the order of registrar is not passed under section 160 of the Act and in second affidavit, same version is changed by stating that it has been passed by Registrar under section 160 of the Act which shows that the Registrar is not sure whether he has passed order either under section 160 of the Act or under any other provisions of the Act. According to him, clarification made by Registrar by filing second affidavit has no consequence since it has been clarified and rightly clarified by him in the first affidavit that the order is not passed under section 160 of the Act and in view of that, version of the deponent filing second affidavit that it was out of misconception and inadvertence to state that the order is not passed under

section 160 of Act, such changed version is not believable. The order of Registrar is very clear that nowhere it is mentioned under it that power is exercised under Section 160 of the Act. Therefore, he submitted that conduct of respondent No.1 is not correct and he has not correctly examined question of jurisdiction and if the order passed by Registrar is perused, then, nowhere it is clarified that this order is passed under section 160 of the Act. Except section 160 of the Act, there is no other provision which would enable Registrar, Cooperative Societies to pass such order to respondent NO.2 relating to mode of recruitment and appointment of employees of respondent NO.2, petitioners in this petition. He also submits that as per section 96 of the Act, Registrar has no power to decide disputes between the society and its employees which are relating to service conditions of the employees of society, therefore, registrar has committed error in

directing respondent no.2 to terminate services of petitioners and such direction issued by Registrar, Cooperative Society to respondent NO.2 are illegal and contrary to Act for want of jurisdiction. In support of his submissions, he has placed reliance upon the decision of apex court in case of State of Maharashtra and others versus Karvannagar Sahakari Gruh Rachna, reported in 2000 (9) SCC 295. He submits that in said decision, apex court has observed that paramount consideration in exercising such power is interests of society. What is in the interest of society is primarily for the society to be decided, therefore, as per his submission, interest of society has to be decided by society and in such cases, interference by Registrar has been held to be without jurisdiction.

10. Learned advocate Mr. A.J.Yagnik appearing for respondent No.3 has quite fairly admitted before this Court that the order of respondent No. 1 would be rendered violative of the principles of

natural justice if the copy of representation of respondent No.3 association has not been supplied by Joint Registrar, Commerce along with show cause notice dated 25th October, 2002. However, his submission is that if that is so, then, matter can be remanded back to the authority with a direction to supply copy of representation of respondent No.3 along with show cause notice dated 25th October, 2002 for fresh decision in accordance with law. His submission has been opposed by the learned advocates for the petitioners on the ground that when the Registrar has no jurisdiction, there is no question of remanding back the matter and it would be a futile exercise of power since respondent No.1 has no jurisdiction to decide the matter. Learned advocate Mr. Yagnik has also admitted that except section 160, there is no other provision in the Act which would give power or jurisdiction to Registrar. He has relied upon decision of this Court dated 29.11.2005 (Coram : D.N. Patel,J.) in

case of **BHAVNAGAR DIST. CO.OP.BANK LTD. & 1 Versus STATE OF GUJRAT & 3 in Special Civil Application No. 20625 of 2005 and submits that Court has come to prima facie conclusion in respect of service matter of society, Registrar has jurisdiction to invoke and exercise power under section 160 of the Societies Act and, therefore, if this Court is taking different view, then, matter has to be referred to the Division Bench but he admits that in Bhavnagar District Cooperative Bank Ltd. Case, there were service bye laws framed by the society whereas in this case, respondent NO.2 has not framed service bye laws for its employees and the same have also not been framed by the State Government for respondent NO.2. Thus, he admits that it is a case wherein recruitment rules and procedure for such recruitment is not framed either by respondent No.2 or by the State Government. He however submits that no procedure for appointment has been followed by respondent NO.2. He also**

emphasized that respondent No.2 is performing duties relating to public and, therefore, if it has taken any arbitrary decision, then, Article 14 will apply and, therefore, such arbitrary decision of respondent no.2 can be examined by Registrar, Cooperative Society under section 160 of the Act. He submits that non following of procedure by society in the matter of appointment of its employees is adversely affecting member societies and farmers too. He has also submitted that transparency in the administration of respondent No.2 is necessary because respondent No.2 is performing public duties. He also submits that respondent No.2 is connected with farmers who are ultimately getting fruits from the society. So, under section 160 of the Act, such action of respondent no.2 will adversely affect financial position of the society and will also adversely affect farmers and member of societies. According to him, if selection is made by respondent No.2 from open market, then, good

employees may come who may serve society better and that will result in benefit for society and there is no reason for society not to follow the just and reasonable procedure for recruitment and, therefore, according to him, private body can do such things but body which is discharging public duties cannot be allowed to adopt such things in the matter of appointment of its employees. According to him, writ petitions are not maintainable as alternative remedy is available to petitioners under the ID Act, 1947 for challenging retrenchment notices. He also submits that earlier, pursuant to the directions issued by this Court (Coram : S.K. Keshote,J.) in Special Civil Application referred to earlier, respondent No.2 was directed by the Registrar, Cooperative Societies to retrench some employees and also to frame recruitment rules/service rules and yet no recruitment rules have been framed by the society and, therefore, respondent No.2 has not complied with the direction issued by

Registrar, Cooperative Societies dated 31.12.1999 pursuant to order of this Court dated 15.8.1999. It is also his submission that respondent No.2 has accepted order of Registrar dated 31.12.1999 pursuant to order of this Court dated 15.8.1999 by retrenching 65 employees who were similarly appointed and, therefore, once order of respondent No.1 has been accepted by respondent No.2 and retrenchment order has been passed against 65 employees, then, on second occasion, why respondent No.2 is opposing such thing? He submits that there is no explanation from respondent No.2 why further direction of registrar dated 31.12.1999 on the basis of order of this Court dated 15.8.1999 has not been complied with by it.

11. At this juncture, learned advocate Mr. Joshi appearing for respondent No.2 has intervened and submitted that if order of respondent No.1 based on the order of this Court dated 15.8.1999 has been accepted and acted upon, that does not mean

that the order of respondent No.1 was legal. According to him, acceptance of order of respondent No.1 by respondent No.2 would not invest jurisdiction in respondent No.1. It is for the society to raise objection against interference made by Registrar in internal management affairs. He submits that though order dated 31st December, 1999 issued by respondent No.1 has not been complied with, no action has been taken by Respondent NO.1 till this date. If Registrar is having power under law, then, why action has not been taken against respondent No.2 for alleged non compliance of order dated 31.12.1999. He also submits that in such case, it cannot be said that respondent No.2 is estopped from challenging order of respondent No.1 and principles of estoppal would not operate against law. According to him, there cannot be estoppal against law.

12. Thereafter, learned advocate Mr. Yagnik has

pointed out that from 1986 to 1989, respondent No.2 society has incurred losses of 19 crores and in this year also, respondent no.2 is incurring losses and, therefore, respondent No.1 has jurisdiction under section 160 and has rightly exercised such jurisdiction in view of the directions of this Court and in exercising such jurisdiction, respondent no.1 has not committed any error.

13. Learned advocate Mr. Yagnik has submitted that factually, Registrar, Cooperative Societies has not participated in the process of selection of petitioners and because of doctrine of necessity, he was ex-officio member of society.

14. Learned advocate Mr. Joshi further submits that section 160 of the Act is relating to cooperation, production and proper management. Registrar, Cooperative Societies, Gujarat State is having limited powers under section 160 of the

Act and he cannot accede the jurisdiction to interfere with the private affairs of management of the society. According to him, first order of this Court (Coram : S.K. Keshote,J.) was an ex parte order about grievance of association that the Registrar, Cooperative Societies has not decided their representation. According to him, it was an innocuous order wherein merits of the matter were not at all decided by this Court. As regards second order of this Court also, he submits that it is also an innocuous order without deciding matter on merits including question of jurisdiction and it was specifically kept open to raise such contention of jurisdiction to be decided by Registrar himself. He submits that if the Registrar is not having power under section 96 of the Act, then, how can he have power under section 160 of the Act. According to him, public interest means interest of members of society and no members of society have raised any grievance or objection about the

appointment of such petitioners. He also submits that no evidence has been given to the Registrar, Cooperative Societies as to how and why such appointments made by the society are detrimental to the interest of members of society. According to him, this society has not been financially aided by the Government and no grant is available from Government. He submits that in case of Bipinchandra Jugaldas Soni v. Gujarat State Co-operative Cotton Federation and Others, reported in 1985 (2) GLR 698, this Court (Coram : S.L.Talati,J.) has held that respondent no.2 is not a "State" or "other authority of State" within the meaning of Article 12 of the Constitution of India. Rules have not been framed by the State Government under section 76 of the Act. Reliance was placed by him upon the decision of apex court in Agra District Co-operative Bank Ltd. v. Prescribed Authority, Labour Court, U.P. And others, reported in AIR 2001 SC 2396. According to him, as per section 76 of the Act,

State Government has to frame rules and not the society and has relied upon the definition given in section 2(15) of the Act, meaning thereby, rules must have to be framed by the State Government. Section 168 is having power by the State Authority as rule making authority, no such rules have been framed by the State Government. In support of his submission, he relied upon apex court decision in The Gujarat State Cooperative Land Development Bank Ltd. v. P.R. Mankad and another, reported in AIR 1979 SC 1203. He also submitted that the copy of finding report submitted by Joint Registrar to Registrar, Cooperative Societies has also not been supplied even to respondent No. 2 and, therefore, respondent No.2 could not annex the same to the retrenchment notices issued by it to petitioners and such other employees. He submitted that in the bye laws framed by the society, no provision has been made for recruitment procedure but these bye laws are giving power to the management

committee of the society to appoint employees. He also submits that in entire order of Registrar, , though Registrar Cooperative Societies imaginary presumed and assumed certain things that if recruitment is not followed by procedure, then, it will adversely affect interest of society including members but because of such appointment, in fact, whether interest of society or member of societies and farmers has been affected or not, that aspect has not at all been examined by him. According to him, entire order of the Registrar is not based on facts and law but it is based on assumption and presumption and it is far away from the hard reality. Mr. Yagnik has relied upon the decision in case of Binny Ltd. And another versus S. Sadasivan and others, reported in 2005 (6) SCC 657 and submitted that Registrar must have to be appointed by notification under section 3(3) of the Act. According to him, only one Registrar is appointed under the notification issued by the State

Government under section 3(3) of the Act and the Joint Registrar who has held inquiry is not appointed by the State Government by issuing such notification. He submitted that before filing writ petition by the Association, three notices were issued to Registrar but no reply was given by Registrar and, therefore, ultimately, petition was filed by the Association. He further submits that the Registrar was ex officio Director of Society but he was not remaining present when appointments were made in the society. He relied upon the decision in case of Gujarat State Cooperative Marketing Federation Ltd. Versus V.H. Parekh and Another, reported in 1995 (1) GLH 857.

15. Learned Advocate Mr. G.M. Joshi has placed reliance on apex court decision in The Gujarat State Cooperative Land Development Bank Ltd. v. P.R. Mankad and another, reported in AIR 1979 SC 1203 and has pointed out that the Registrar, Cooperative Societies has no jurisdiction under

section 96 of the Act to decide disputes between society and its employees.

16. Learned Government Pleader Mr. Arun D. Oza as well as learned AGP Mr. Mukesh Patel have supported the order of Registrar, Cooperative Societies and have submitted that Registrar, Cooperative Societies has power and authority to pass such order and to issue direction against respondent NO.2 to terminate services of its employees. They submitted that when the society is acting against interest of members and farmers, then, Registrar has power to pass such order. It is submitted that because of the di5rection of this court, Registrar has examined the matter according to law and has passed legal and valid order under section 160 of Act and in doing so, no error whatsoever has been committed by Registrar, Cooperative Societies. Reliance was placed by them on the decision of this Court dated 29th November, 2005 in Special Civil

Application No. 20625 of 2005 as well as earlier decision of this Court (Coram : S.K.Keshote,J.) in special civil application no. 3028 of 1999 and it was submitted that for securing proper management of business, if it is found that the activities or actions of society are not in the interest of members, then, prima facie, Registrar, Cooperative Societies has jurisdiction under section 160 of the Act as held by this Court (Coram : D.N. Patel,J.) in SCA No. 20625 of 2005. They also relied upon decision of this Court in Motibhai R. Chaudhary, Chairman versus Registrar, Coop. Societies, reported in 2005 (1) GLH page 270, para 13 and 14 in particular and submitted that in first affidavit, it was mentioned that the order was not passed under section 160 but subsequently it was corrected by filing second affidavit and it was made clear by the same person who had filed earlier affidavit. Therefore, according to them, order made by Registrar, Cooperative Societies is in accordance

with law. It is also submitted by them that these petitions are not maintainable as the petitioners are having alternative remedy under the ID Act, 1947 for challenging the retrenchment notices. They also submits that the direction issued by the Registrar, Cooperative Societies on 31st December, 1999 was not challenged by respondent NO.2 but the same was acted upon. They also relied upon the decision Amreli Municipality versus Gujarat Pradesh Municipal Employees Union reported in 2004 (2) GLH 692 para 12, sub para (1), (12) and (13).

17. Relying upon the aforesaid paragraphs, it was submitted by them that back door entries of any employees cannot be recognized by any Court of law and since appointments of 161 employees are amounting to back door entry, Registrar, Cooperative Societies has rightly directed respondent No.2 to terminate service of such employees having back door entry in service. They

also emphasized that respondent No.2 has answered that there is nothing wrong in recruiting such employees but it is not open for respondent no.2 to give such answer because respondent NO.2 is not a private establishment but it is a public body and cannot behave in this manner. They also submitted that if surplus employees are appointed, then, financial burden upon the society would adversely affect interest of members of the society and, therefore, Registrar, Cooperative Societies has rightly examined the matter and discussed submissions made by all parties. Learned AGP Mr. Patel has submitted that various part of bye laws would give power to the society to make appointment of staff and board of directors and even bye laws which are in existence give power to follow recruitment procedure and yet respondent no.2 has not followed procedure while making recruitment of 161 employees. He submitted that Registrar, Cooperative Societies can suo motu or otherwise

exercise such powers under section 160 of the Act.

18. On the other hand, learned advocate Mr. Tushar Mehta appearing for petitioners submitted that section 160 of the Act is virtually held ultra vires by the Division Bench of this Court in Amreli District Co-Operative Sale & Purchase Union Ltd. & Ors. v. State of Gujarat, reported in 25(2) GLR 1244. He further submitted that against the judgment of Division Bench of this Court, SLP were filed by State Government as well as the society which were ultimately admitted by the Supreme Court as Civil Appeal but subsequently both civil appeals were withdrawn by the respective parties and, therefore, law laid down by Division Bench of this Court Amreli District Co-Operative Sale & Purchase Union Ltd. & Ors. v. State of Gujarat, reported in 25(2) GLR 1244 is binding decision on the subject. He relied upon para 86 of the judgment and submits

that the Division Bench of this Court has held that the power under section 160 of the Act is unreasonable restriction on the society. According to him, section 76 is relating to qualification and no rules have been framed by the State Government so far and that even the Rules are there about qualification, terms and conditions but no rules for mode of recruitment procedure have been framed. Section 76A is relating to Managing Director which too has been held violative of Article 19(1)(c)(g) of Constitution of India. by the Division Bench in the aforesaid decision. Section 89 gives power to Registrar to suspend officer/paid servant. So, according to him, whenever there is power , it has been specifically made clear by the provisions under the Act and when there is no power, there is no provision made in the Act and, therefore, Registrar is having no power to pass order in question under section 160 of the Act. According to him, no guidelines have been

prescribed under section 160 of the Act. In what circumstances, Registrar, Cooperative Societies can exercise such power is not prescribed. He relied upon decision in State of Gujarat and another versus Suryakant Chunilal Shah (1999) 1 SCC 529. He referred to section 73, 74 and 77 of the Act and pointed out that the general body where all the members of society are there which appoint managing committee under section 74 by method of election. According to him, virtually, while deciding validity of section 160 of the Act, Division Bench of this Court has held that the powers under section 160 of the Act is unreasonable restriction on society, therefore, Registrar has no jurisdiction under section 160 to examine validity of appointment made by respondent NO.2 and Registrar has not given reasonable opportunity to petitioners before passing order against them. According to him, order of Registrar, Cooperative Societies is also violative of the principles of natural justice

since petitioners were not supplied copy of representation dated 1st August, 2002 made by respondent No.3 before respondent No. 1 and also since petitioners were not supplied with the copy of finding report submitted by Joint Registrar to the Registrar, Cooperative Societies before passing order and since their representation against the findings of Joint Registrar were not invited by Registrar, Cooperative Societies before issuing direction to respondent No.2 to terminate their services. He also submitted that the Registrar who has passed order in question has not filed any affidavit before this Court supporting his own order and has also not made it clear whether he has exercised power under section 160 or not. According to him, Registrar must support his order by filing affidavit of his own but in this case, no such affidavit has been filed by Registrar, Cooperative Societies, Shri P.S. Shah whose order is under challenge. Therefore, in absence of such affidavit of the

Registrar, Cooperative Societies, order in question passed by Registrar, Cooperative Societies is illegal and without jurisdiction. Therefore, according to him, order of Registrar , Cooperative Societies is required to be quashed. He clarified that he is adopting other submissions made by Shri Paresh Upadhyay on behalf of petitioners. Learned advocate Mr. Devang Vyas has also submitted that he is adopting the submissions made by Shri Paresh Upadhyay and Tushar Mehta on behalf of the petitioners.

19. I have considered submissions made by learned advocates for parties. I have perused record as well as written submissions made by Mr. Mehta on behalf of petitioners. I have also perused affidavit in reply filed by respondents.

20. Main question arising in this group of petitions is whether the Registrar who has passed

order on 28th February, 2002/3rd March, 2002, has jurisdiction and power to pass such order under section 160 of the Act and whether the order in question is in consonance with the principles of natural justice or not.

21. Before dealing with this question, scheme of the Act about internal management affairs of the society is required to be considered. Cooperative Society is founded on the principle of cooperation and right of autonomous functioning is an internal part of formation of any cooperative society except those interferences which are statutorily permissible by making provisions under the Act , no interference in the autonomous functioning of the society is contemplated or permitted under the Act. A cooperative society becomes body corporate upon its requisitions under section 37 of the Act. For appreciation of this aspect, section 37 of the Act is required to be taken into consideration.

Same is, therefore, reproduced as under:

> "Section 37 : Societies to be bodies corporate. A society on its registration shall be a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings, and to do all such things as are necessary for the purpose for which it is instituted. "

23. Final authority of every society is statutorily vested in the General Body of the members as contemplated under section 73 of the Act. General Body of the members which includes all affiliated members of a cooperative society elect a Managing Committee. So far as respondent No.2 society is concerned, it is a specified cooperative

society within the meaning of section 74-C of the Act as it finds place in the Schedule appended to the Act. Indisputably, respondent No.2 is a specified cooperative society under section 74C(1)(i) of the Act. Managing Committee is to be elected by the General Body as contemplated under section 74-C (3) of the Act, which reads as under:

> Notwithstanding anything in the bye-laws of any such society, the committee of management shall be elected by a general body of members of the society and all other committees authorised by or under the bye-laws may be constituted by electing or appointing persons from among the persons who are members of the committee of management, and all such committees shall be sub-committees of the committee of management, and shall be subordinate to it :

Provided that it shall be lawful for the State Government.-

(a) to nominate its representatives on a Committee of any such society under section 80, or

(b) to nominate the first Committee of Management of any such society where the bye-laws of such society so provide.]

1[Provided further that it shall be lawful for any body or authority to nominate its representative on a Committee of such society where the bye-laws of such society so provide.]

26. Management of every society is vested in the Committee constituted in accordance with the Act, the Rules and the Bye laws as provided for under section 74 of the Act, which reads as under:

"74. Committee, its powers and functions.-

The management of every society shall vest in a committee, constituted in accordance with this Act, the rules and bye-laws, which shall exercise such powers and perform such duties as may be conferred or imposed on it respectively by this Act, the rules and the bye-laws.

1[Provided that a Committee of a society falling in any of the categories mentioned in sub-section (1) of section 74C shall not be so constituted as to require a certain part or number, of its members to periodically retire by rotation and any bye-law of such society containing such provision shall with effect on and from the commencement of section 2 of the Gujarat Co-operative Societies (Amendment) Act,1981 (6 of 1981) cease to be in force.]"

27. The only enabling power conferred upon the State Government with respect to

recruitment is to be found in section 76 of the Act, which reads as under:

"76. Appointment of officers and employees and their conditions of service.-

The qualifications for the appointment of a manager, secretary, accountant or any other officer or employee of a society and the conditions of service of such officers and employees shall be such as may, from time to time, be prescribed:

Provided that no qualifications shall be prescribed in respect of any officer not in receipt of any remuneration."

27. A close scrutiny of said provision made under section 76 of the Act would make it clear that even under the Rules framed by the State Government, the State Government can only provide for qualification and conditions of service of employees of the cooperative society. Recruitment procedure

cannot be provided for even under the Rules framed under section 76 of the Act. So far as the State of Gujarat is concerned, no rules are framed under section 76 of the Act and, therefore, question of prescribing qualification for appointment or service conditions of statutory rules does not arise. Said question is examined by Division Bench of this Court in Malvikaben Bhikhabhai Patel & Ors. Versus State of Gujarat and Ors., reported in 1998 (2) GLR page 1258. Division Bench of this Court (Coram : Hon'ble Mr. Justice K. Sreedharan, CJ and Hon'ble Mr. Justice M.S.Shah) observed as under in para 5 and 8 of the judgment:

"5. Section 76 of the Gujarat Cooperative Societies Act 1961, relates to appointment of the officers and employees of the Societies and other conditions of service. It states that the qualifications for

appointment of an employee of a society and the conditions of service shall be such as may be prescribed from time to time. Term "prescribed" has been defined in Section 2(15) of the Act as prescribed by rules. So the Act contemplated rules laying down the terms and conditions of service of employees in Cooperative societies. Section 168 of the Act authorises the Government, by notification in the official gazette, to make rules on matters required by the Act to be prescribed. A cumulative effect of these statutory provisions enables the Government to prescribe qualifications and conditions of service of the members of staff of the Cooperative Societies. State of Gujarat has not so far framed any rules relating to the qualifications and conditions of service in Cooperative Societies or the Cooperative Banks. In absence of such rules, service regulations

framed by the various Cooperative Societies control qualifications and conditions of service of their employees. As per the service regulations applicable to 4th respondent Bank, Regulation 9(5) quoted above has to be followed. This was the direction given by the Division Bench in Special Civil Application No.3897 of 1996.

8. The first ground, noncompliance with the directions in selecting persons having less than 50% marks in degree examination, cannot be sustained for the reasons stated hereinabove in the earlier paragraphs. Neither the byelaws nor the service regulations framed by 4th respondent provide for reservation for Scheduled Caste and Scheduled tribe candidates. No provision is enacted in the Cooperative Societies Act enjoining the Cooperative Societies to follow reservation principles while making

appointment to its staff. Government of Gujarat has not framed any regulations invoking the provisions contained in Section 168 of the Cooperative Societies Act. In the absence of such statutory provisions the Registrar was not entitled to give any direction to the Society to comply with the "standard of reservation as prescribed by the Government". If the Government has prescribed any standard for reservation that can be traced to the provisions contained in Article 335 of the Constitution; but it relates to only appointments to services and posts in connection with the affairs of the State. Appointment to the staff of the Cooperative Society is not in connection with the affairs of the State. Therefore, the said direction given by the Registrar cannot also be sustained."

28. Concept of autonomous functioning of a

cooperative society without interference by the statutory authority was sought to be diluted by the State Legislature by incorporating section 76A of the Act. Under the said provision, appointment or removal of a Managing Director was statutorily required to be approved. Section 76A of the Act reads as under:

"Section 76-A :

APPOINTMENT OR REMOVAL OF MANAGING DIRECTOR OR CHIEF EXECUTIVE OFFICER TO BE APPROVED:

(1) No Managing Director or Chief Executive Officer of such society falling within such class of societies as the State Government may, by notification in the Official Gazette, specify (hereinafter in this section referred to as "the notified society") or person exercising the powers and performing the functions and duties of the Managing Director or Chief Executive Officer of such notified society by

whatever designation known, shall be appointed or removed by such notified society except with the previous approval of the Registrar.

(2) Any appointment or removal of a Managing Director or Chief Executive Officer or a person exercising the powers and performing the functions and duties of such Director or officer made without the previous approval of the Registrar shall be void."

29. Constitutional validity of the aforesaid provision has been examined by the Division Bench of this Court in Amreli District Coop. ***Sale and Purchase Union v. State*** reported in 1984 (2) GLR page 1244. Para 74, 76 and 77 are reproduced as under: Para 74, 76 and 77:

"74. On behalf of the petitioners these provisions have been challenged on the ground that they interfere with the right

of management which is an integral part of the fundamental right of association inasmuch as no Managing Director or Chief Executive Officer can be appointed or removed in respect of such class of societies as the State Government may be notification in the Official Gazette specify, except with the previous approval of the Registrar, and any appointment without such approval is void. The power of the Registrar under sec. 76-B to remove any officer who makes persistent default or is negligent in performance of his duties imposed by principal Act or the Rules or Bye-laws, or does anything which is prejudicial to the interest of society, or is disqualified by or under the Act to direct the society to elect or appoint a person in the vacancy caused by such removal is also challenged on the same ground. The State government has in the

common reply affidavit filed on its behalf by Shri D.K.Patel tried to justify the insertion of these two new provisions on the following ground :

"16. With reference to sec.76-A as inserted in the principal Act by the amending Act it is stated that it has been observed that experienced, qualified and competent Managing Directors or Chief Executive Officers of societies are arbitrarily removed by the society and in their place new persons are appointed though lacking in qualifications and experience requisite for holding such responsible position by nepotism and favourtism. In fact, for efficient management of major types of co-operatives, it has been found necessary that chief executive officers are selected and appointed by such societies by proper method of recruitment and on the basis of adequate qualifications and experience

required for the job. Security to the tenure of the chief executives or objective selection of the latter is very much necessary in the overall interest of co-operative movement. Non-security or insecurity of service is one of the reasons coming in the way of the emergence of competent professional management for the co-operative institutions. The newly added section, therefore, only requires that the management of the specified societies have to adhere to certain standards of recruiting their chief executive and other senior officers and it is for ensuring this that the provisions for approval of Registrar for such appointment or removal is provided. In the interest of co-operative movement, it is essential to discourage arbitrary decisions of appointment or dismissal of these officers...

17. With reference to sec.76-B, it is stated that if the managing committee of the society persistently makes defaults or is negligent in performance of duty imposed on it by the principal Act rules made thereunder or the bye-laws of the society or if it does any act then prejudicial to the interest of the society or its members under provisions of sec.81 of the principal Act the managing committee of society is liable to be removed and an administrator can be appointed in its place. There was no provision in the principal Act for the removal of any individual officer for the acts of omission and commission. Thus, on account of the default of the Chairman of a society or that of a single office bearer whole managing committee was liable to be removed. This is considered harsh and as such at this new provision action on the

individual found responsible for such default is contemplated without disturbing the whole managing committee. This provision has been made in the interest of good management of society...”

76. However, as regards sec.76-A, we are afraid that no case has been made out by the State Government as to why such a provision was found necessary in public interest. The arbitrary, capricious or unauthorized removal of the Managing Director can always be challenged by an aggrieved party in a court of law and any mala fide or illegal action can be impugned by a Court. No public interest can, therefore, be served by enjoining previous approval of the Registrar before exercising such power of Managing Director or Chief Executive Officer of any society.

77. As regards the appointment, we have not been provided with any cogent and authoritative material to persuade us that in the matter of appointment at such senior managerial level, there is a widespread malpractice committed by the societies. The extent of evil or the urgency for removal thereof is also not substantiated by the State Government. The justification of ensuring the appointment of qualified, experienced and competent persons on the posts in such senior managerial level does not appear to us to be impressive for the obvious reason that the Board of Directors or the Managing Committee will be the worst sufferer in the matter if such appointment is made indifferently or mala fide since it would have its far reaching repercussions not only on the integrity and bona fide of the members of the Managing Committees or the Board of Directors, but would have also

a chain of reaction in the financial results of the societies which have substantial turnover of business and high financial stakes in the working of the societies. Apart from this obvious reasons, we have not been pointed out as to how many such objectionable appointments have been made which required the State Government to intervene and provide for previous approval of the Registrar. How the previous approval of the Registrar would also be able to curb the malpractice if any there be, is also debatable. The provision is also open to challenge as violative of Article 14 with which we will deal at the appropriate time. The inevitable and direct effect of this restrictive provision is more on the right to association and, therefore, to manage through its officers and, therefore, the State action is to be judged from the angle of the necessity of such a restriction from

the point of public order or the sovereignty of the country. It is hardly possible to contend that such a restriction is necessary in public order. Assuming that the direct and inevitable effect is on the right to carry on business, even then it is difficult to persuade ourselves as to which type of societies or class of societies the State Government has found large scale malpractice and therefore though it necessary for curbing it to make such provision. In that view of the matter, therefore, the provision contained in sec.76-A is violative of Art.19(1)(c) of the Constitution and in any case Art.19(1)(g) thereof."

30 Looking to the above observations of the Division Bench, the only permissible interference in the functioning of a society with respect to its employee is

found under section 89 of the Act. As per said provisions, if Registrar finds (i) while conducting audit under section 84 or an inquiry under section 86 or an inspection under section 87 or section 88 that a paid officer or servant of a society has committed or has been otherwise responsible for misappropriation, breach of trust or other offence, in relation to the society, then, the Registrar may, if in his opinion, there is prima facie evidence against such paid officer or servant and the suspension of such paid officer or servant is necessary in the interest of the society, direct committee of the society pending the investigation and disposal of the matter to place or cause to be placed such paid officer or servant under suspension from such date and for such period as may be specified by him.

31. Though in affidavit filed by Deputy Registrar on behalf of respondent No.1, it is clearly stated that the order is not passed under section 160 of the Act, reliance thereon has been placed. Since reliance is placed thereon, it is required to be appreciated. Section 160 gives power to Registrar to issue direction to society if Registrar, of his own motion or otherwise is satisfied that (i) in public interest or (ii) for the purpose of securing proper implementation of cooperation production and other development progress approved or undertaken by the State Government or (iii) linking coordinating of cooperative activities such as marketing and credit or (iv) for securing proper management or business of the society or (v) for preventing affairs of the society being conducted in a manner detrimental to the interests of the members

or of the depositors or creditors thereof. Relevant section 160 of the Act is reproduced as under:

> **"160.Registrar's power to give direction.**- (1) If the Registrar of his own motion or otherwise is satisfied that in public interest or for the purposes of securing the proper implementation of co-operative production and other development programmes approved or undertaken by the State Government or for linking and co-ordinating of co-operative activities such as marketing and credit or securing the proper management of the business of the society generally or preventing the affairs of the society being conducted in a manner detrimental to the interest of the members, or of the depositors or the creditors thereof, it is necessary to issue directions to any class of societies generally or to any society or societies in

particular, he may issue directions to them, from time to time, and all societies or the society concerned, as the case may be, shall be bound to comply with such directions.

(2) The Registrar may of his own motion or otherwise modify or cancel any directions issued under sub-section (1), and in modifying or cancelling such directions he may impose such conditions as he may deem fit.

(3) Where the Registrar is satisfied that any committee or, as the case may be, a general body of any society, whose duty it was to comply with any directions issued or modified as aforesaid, has failed, without any reasonable or sufficient cause, to comply with such directions, the Registrar may exercise the powers conferred on him

under sub-section (1) of section 81 or, as the case may be, under sub-section (1) of section 107.

(4) Where the Registrar is satisfied that any person, whose duty it was to comply with any directions issued or modified as aforesaid, has failed without any reasonable or sufficient cause, to comply with such directions, the Registrar may, by an order in writing,-

(a) if such failure is committed by a member of the committee of the society in his capacity as a member of such committee, remove him as a member from the committee and appoint any other person as a member of the committee in his place for the remainder of the term of his office;

(b) if such failure is committed by a

member of the society not falling under clause (a), remove him as a member of the society:

(c) if such failure is, committed by an employee of the society, direct the society to remove such employee from employment of the society forth-with and if the society fails, without reasonable or sufficient cause to take action in pursuance of such direction,

make an order removing such person from employment of the society and thereupon such person shall be deemed to have been removed by the society:

Provided that, before making any order under this sub-section, the Registrar shall give or cause to be given a reasonable opportunity to the person concerned to show cause against the action proposed to be

taken in regard to him."

32. Validity of section 160 of the Act has been considered by the Division Bench of this Court in Amreli District Cooperative Sale and Purchase Union (Supra). Relevant observations made by the Division Bench in para 86 at page 1319 of judgment are reproduced as under:

> "86. In our opinion the consequences prescribed for non-compliance of the directions amount to unreasonable restrictions which cannot be justified on the ground of public interest. The reasons are obvious. We have not been able to appreciate in the first place the mischief ensuing as a result of the old sec.160 as pleaded by the State Government. The old section insofar as it provided an obligation of obtaining prior approval of the State Co-operative Council was a very healthy and a necessary safeguard against the power of the Registrar of issuing directions becoming too arbitrary and subjective. The additional ground for exercise of the power namely public interest or the prejudicial management of the affairs of the society are terms of uncertain import. The inbuilt check which was prescribed in the original sec.160 was required to be removed because according to the State Government the

State Co-operative Council could not be constituted on account of political changes or President's Rules or its permission could not be obtained within reasonable time. This is to say mildly an apology of justification. The inaction on the part of the authorities to constitute Council due to political changes or President's Rules or delay in obtaining its approval can hardly be said to be a mischief ensuing as a result of any lacuna in the old section. The difficulties, if there were any, ensuing as a result of abrupt transfer of political powers or the necessity of President's Rule cannot be said to be mischievous reason out of any inherent lacuna in the section or as a result of working thereof. The extent of the consequences ensuing as a result of the remedy which has been provided now in the new section is too far reaching and that too without any opportunity of hearing to the aggrieved society or a persons concerned. Merely because the Registrar has a power to modify his directions can hardly be said to be a substitute for the opportunity of hearing before the power is exercised. We must, therefore, hold that the consequences prescribed in sub-sec. (3) and (4) make the entire power an unreasonable restriction on the fundamental right to carry on business or trade. We must, therefore, hold that sub-secs. (3) and (4) should be held to *ultra vires* Art.19(1)(g) of the Constitution and must be quashed and set aside."

33 Thus, as per the observations made by Division Bench of this Court in aforesaid decision, ***consequences prescribed in sub section (3) and (4) make entire power unreasonable restriction on the fundamental right to carry on business or trade.*** It means entire power of Registrar under section 160 of the Act has been treated as unreasonable restriction.

34 In view of the above observations of the Division Bench , considering entire power of Registrar under section 160 as unreasonable and to held ultra vires section 160(3) and (4), then, what further remains in the powers of the Registrar under section 160 of the Act ? When Registrar exercised powers under section 160 and he has no right to take any action for non compliance against society, then, such powers become redundant and no legal

value could be attached to such power and such powers become formal or meaningless.

35 In light of this back ground of section 160 of the Act, whether the Registrar, Cooperative Societies has power to issue any direction against the society to terminate services of such employee or not is the question to be decided. If whole section is kept in mind in light of the observations made by the Division Bench of this Court, then, it becomes clear that Registrar has power under section 160 only in respect of proper implementation of cooperative production, development progress linking and coordinating of cooperative societies and marketing and crediting, proper management of business and affairs of the society being conducted in a manner detrimental to the interest of members or depositors and creditors.

Nowhere it includes power to decide validity of appointments made by the society. In the facts of this case, undisputably, respondent No.2 has not framed any service bye laws or service regulations. Even State Government has also not framed service rules or regulations under section 76 of the Act. Not only that, respondent No.2 has also not prescribed qualifications for the posts in which recruitment has been made.In such circumstances, when no bye laws or any statutory rule which is required to be followed as a mandate to the society, then, if society, according to their procedure, prescribes qualification at the time of appointing candidates and follows procedure of interview and selection by appointing sub committee by Managing Committee and on their selection, appoints such candidates, whether it can be said that society has

acted arbitrarily or in a discriminatory manner in violation of Article 14 of the Constitution of India. Respondent NO.2 is not a State or other authority of the State within the meaning of Article 12 of the Constitution of India as held by this Court in Bipinchandra J. Soni versus Gujarat State Cooperative Cotton Federation and others reported in 1985 (2) GLR 698 (Coram : S.L. Talati,J.). In such circumstances, a private management of the society decides their own affairs, how to manage activities and business of the society, how to employ employees is within their jurisdiction, power and authority. Issuance of direction by the Registrar to society to terminate service of such employees who are not recruited as per rules or procedure is not satisfying the requirement of section 160 of the Societies Act. Admittedly, in this case, no members

of the society has challenged or raised any grievance against appointment of petitioners. Not a single member of Managing Committee has also raised any contention or grievance that such appointment is bad as procedure is not followed . Further, at the relevant time, Registrar was ex-officio member of the Managing Committee of the Society. He must, naturally, be knowing such type of appointments being made by the society, For appointment of petitioners, selection was made by sub committee constituted by the Managing Committee and ultimately each appointments were approved by Managing Committee wherein Registrar was ex officio member of such a committee, therefore, Registrar, while exercising powers under section 160 of the Societies Act, cannot enlarge the scope of it beyond the language employed in section 160 of the Act.

Language of section 160 of the Act is very much clear, limited to certain activities of the society but it does not include decision of society in respect of appointment of its employees by proper procedure of interview and selection by sub committee. Apparently, this action of society in appointing candidates as an employee is out side the scope of section 160 of the Act, otherwise, while exercising powers under section 160 of Act, Registrar can issue direction to the society to terminate any employee working with the society though society is satisfied with the performance of such employee. The Registrar can direct the society to suspend any employee or to revert or punish any employee. The Registrar is not having any disciplinary control over the employees of society and also not having any power to interfere with mode of recruitment of such

employee in absence of statutory Rules or Bye laws. If such kind of interference of Registrar once recognized, then, it become direct conflict between society and Registrar. So, Registrar is having very limited power touching business, management and constitution of society which does not include the mode of recruitment of employees. Therefore, Division Bench of this Court in Amreli District Cooperative Sale and Purchase Union observed that the entire power of Registrar under section 160 of the Act are unreasonable.

36 Now, there is another provision in the Societies Act which is giving power to Registrar to decide disputes touching constitution, management or business of society that it shall be referred to in the prescribed form either by any of the parties to dispute or by federal society to

which the society is affiliated or by a creditor of the society, therefore, under section 96, if any dispute touching constitution, management or business of the society, then, it shall have to be referred to the Registrar by an aggrieved party and Registrar is having jurisdiction to decide disputes under section 96 of the Societies Act, 1961. Section 96 of the Act is reproduced as under:

> "**Section 96. Disputes.**(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or business of a society shall be referred in the prescribed form either by any of the parties to the dispute, or by a federal society, to the Registrar, if the parties thereof are from amongst the following:-
>
> (a) a society, its committee, any past committee, any past or present officer, any past or present agent,

any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society:

(b) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society;

(c) a person, other than a member of the society, who has been granted loan by the society, or with whom the society has or had transactions under the provisions of section 46, and any person claiming through such a person;

(d) a surety of a member, past member or a deceased member, or a person other than a member who has been granted a loan by the society under section 46, whether such a surety is or is not a member of the society;

(e) any other society, or the Liquidator of such a society.

(2) When any question arises whether for the purposes of sub-section (1) a matter referred to for decision is a dispute or not, the question shall be considered by the Registrar, whose decision shall be final;

Explanation I.- For the purposes of this sub-section, a dispute shall include-

(i) a claim by a society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, without such a debt or demand be admitted or not;(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a society and recovered from the surety owing to the default of the principal borrower, whether such a sum or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member, or deceased member, by any officer, past officer or deceased officer, by any agent, past agent or

deceased agent, or by any servant, past servant or deceased servant, or by its committee, past or present whether such loss be admitted or not;

(iv) a refusal or failure by a member, a past member or a nominee, heir or legal representative of a deceased member, to deliver possession to a society of land or any other asset resumed by it for breach of conditions of the assignment.

Explanation II- For the purposes of this section, the expression "agent" includes in the case of a housing society, an architect, engineer or contractor engaged by the society. "

38 Question is, whether the appointment of an employee is touching the constitution, management or business of the society or not. Second question is whether the Registrar has jurisdiction under section 96 of the Act in relation to termination of an employee by

society or alteration in service conditions by the society or any other matter or dispute between the society and its employees. This question has been examined by apex court as well as various other High Courts in number of cases. Apex court has come to the conclusion that the matters relating to termination of employees of society or any alteration in service conditions by the society or any dispute about service condition with the society by its employees are not covered within the jurisdiction of Registrar under section 96 of the Act. Registrar is having power to decide disputes arising under the Cooperative Societies Act and is having limited jurisdiction to decide dispute touching constitution, management and business of the society. In these circumstances, quasi judicial power of the Registrar is limited. Therefore, question arise, whether the Registrar is having power and jurisdiction

under section 160 of the Act to decide legality, validity and propriety of the appointments of petitioners made by society which is relating to service condition of such employees. If Registrar is not having quasi judicial power, then, how he is having administrative power upon society in relation to service condition of employees or recruitment procedure or appointments of such petitioners. Scheme of the Act is very much clear that the registrar is having control only in respect of the matters relating to constitution, management and business of the society and beyond that, Registrar is not having any control over the society. These parameters, disputes between employees and society relating to service condition is clearly out side the scope of section 96 of the Act, therefore, section 160 is required to be kept in mind while considering the question of jurisdiction, power and authority of

Registrar to decide legality and validity of appointment orders of petitioners. Provisions of section 96 of the Act are relating to quasi judicial power of Registrar to decide disputes touching constitution, management and business of the society. Therefore, when service condition of employee, mode of recruitment procedure, appointment order and validity of such appointment are not a dispute within the purview of section 96, then, under the guise of sec. 160 which is general in nature, cannot be interpreted to the extent which include decision or action of society relating to condition of service or mode of recruitment procedure or employment of petitioners. Power to terminate service of an employee is with the society who has appointed such employee. There is no need under the bye laws which would require prior approval of Registrar for appointment of any employees in the society. Bye laws are not having statutory force. In

this case, respondent No.2 is not having service bye laws. Bye laws which are in existence do not provide for mode of recruitment procedure, qualification. Under section 76, State Government has not framed any rules. So, there is no statutory rules for mode of recruitment procedure and there is no service bye laws for recruitment in respondent no.2, therefore, in absence of such service bye laws or regulation or statutory rules, procedure which has been adopted by society, respondent No.2 also not required to have any prior permission or subsequent approval from the Registrar. Such appointments are not touching constitution, management and business of the Society. If that be so, then, under section 160, by suo motu or otherwise, how Registrar can direct respondent No.2 society to terminate service of its employees ? Therefore, it is beyond the scope of section 160 of the Societies Act. Except that, there

is no other provision which would give power or jurisdiction to Registrar to cancel such appointment.

39 In Allahabad District Cooperative Bank Ltd. Versus Hanuman Dutt Tiwari, AIR 1982 SC 120, apex court has observed as under in para 1,2 and 3 in respect of section 96:

> "1. The only question raised in this appeal is whether the suit filed by the respondent for a declaration that the retrenchment of his services by the appellant Allahabad Dist. Co-op. Ltd., Allahabad, a co-operative society constituted under the Uttar Pradesh Co-operative Societies Act is (sic) barred by the provisions of S:70 of the Act. According to Mr.Pramod Swarup, learned counsel for the appellant, the dispute relates to the business of the co-operative society and, therefore, the suit is barred by the provisions of S.70.
>
> 2. The expression "business of the society" has been construed by several decisions of this Court. In Deccan Merchants Co-operative Bank Ltd. V.

Dalichand Jugraj Jain, (1969) 1, SCR 887 (AIR 1969 SC 1320) it was pointed out " the word business" has been used in a narrower sense and it means the actual trading or commercial or other similar business activity of the society which the society is authorized to enter into under the Act and the Rules and its bye-laws". In Co-operative Central Bank Ltd. v. Additional Industrial Tribunal, Andhra Pradesh, (1970) 1 SCR 205 : (AIR 1970 SC 245), it is said "but the meaning given to the expression 'touching the business of the society', in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression. Since the word 'business' is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of its employees, can be said to be a part of

its business, it would appear that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society."

3. In view of the above pronouncements of this Court, we cannot accept the submission of Shri Pramod Swarup. The appeal is, therefore, dismissed with costs."

40. Similar view has been taken by various High Courts. [See: Kendriya Sarvodya Sahakari Sangh versus Jawan Singh and another, reported in AIR 1968 Rajasthan page 33; Kaasturbanagar Cooperative Houses Construction Society versus K. Soundararajan and another, AIR 1968 Madras page 67; Rambhau Jairam Dhamange and others versus President, Vinkar Cooperative Society Ltd., Chanda and others, AIR 1966 Bombay 187 (at Nagpur)].

41. In Bihar State Cooperative Marketing Union Ltd. Versus Registrar,Cooperative Societies, Bihar and another, AIR 1974 Patna 77 it is

observed as under : [Head Note A]

> "The word 'dispute' in section 48 does not include within its ambit service conditions of the employees of a society. Therefore, a dispute that the promotion of cashier to the post of Accountant was not valid and justified, being a dispute in relation to the service conditions of the servant employee cannot be held to be a dispute touching the business of the society. The Registrar, therefore, has no jurisdiction to deal with such a dispute under section 48 (1) of the Act (1962) ILR 41 Pat 325 Distinguished.
>
> Nor could the application under section 48 (1)(b) and © be held to be an appeal under S. A (iii) or H (II) of the Staff Regulations of the Bihar State Cooperative Marketing Union Ltd."

42. Head Notes (A), (B) and (C) in Co-operative Central Bank Ltd. And others etc. v. Additional Industrial Tribunal Andhra Pradesh, Hyderabad and others etc., AIR 1970 SC 245 are

reproduced as under :

> "(A) Cooperative Societies - Andhra Pradesh Cooperative Societies Act (7 of 1964), Section 61 - Dispute capable of being resolved by Registrar under section 61 - Jurisdiction of Industrial Tribunal under Industrial Disputes Act, 1947 is barred (Para 2)
> (B) Cooperative Societies - Andhra Pradesh Cooperative Societies Act (7 of 1964), Sections 61, 16 - 'Dispute touching business of society'- dispute relating to alterations of conditions of service - It cannot be held to be dispute touching 'business' of society - Such dispute is not contemplated to be dealt with under Section 62 and is, therefore, out side scope of section 61; it could only be dealt with by Industrial Tribunal under Industrial Disputes Act, 1947 - Provisions of Section 16(5) are irrelevant when considering scope of jurisdiction of Registrar under section 61.
> (C) Cooperative Societies - Andhra Pradesh Cooperative Societies Act (7 of 1964) bye laws of cooperative society framed in pursuance of provisions of the Act 0 They cannot be held to have force of law - (Companies Act (1956), Section 36) - (Industrial Employment (Standing Orders) Act (1946) Sec.2 (g)).
> The bye laws of a cooperative society framed in pursuance of the provisions of the Act cannot be held to be law or to have the force of law. It has no doubt been held that if a statute gives power to a Government or other authority to make rules, the rules so framed have the

> force of Statute and are to be deemed to be incorporated as a part of the statute. That principle,however, does not apply to bye laws of the nature that a cooperative society is empowered by the Act to make. The bye laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They are of the nature of the Articles of Association of a company incorporated under the companies Act. They may be binding between the persons affected by them but they do not have the force of a statute. (para 10)"

43. Same view has been taken by Delhi High Court as per the decision in National Cooperative Consumers Federation Ltd. Versus Delhi Administration, reported in AIR 1971 Delhi page 141.

In Gujarat State Cooperative Land Development Bank Ltd. Versus P.R. Mankad, AIR 1979 SC 1203, apex court observed as under in para 21, 34, 35 and 37:

> **"21.** As regards the first test, it is to be noted that the express 'any dispute' has not been defined in the Acts of 1925 and 1961. The term 'dispute' means a controversy having both positive and

negative aspects. It postulates the assertion of a claim by one party and its denial by the other. The word 'any' prefixed to 'dispute' may, at first glance, appear to give the expression 'any dispute' a very wide amplitude covering all classes of disputes, whatever be their nature. But the context of these provisions, the object and scheme of the Acts of 1925/1961 show that the Legislature never intended to give such a wide scope to this expression. The related provisions and the scheme of the Acts unerringly indicate that the expression 'any dispute' has been used in a narrower sense limited to contested claims of a civil nature, which could have been decided by civil nature, which could have been decided by civil or revenue courts, but for the provisions with regard to compulsory arbitration by the Registrar or his nominee, found in Section 54 of the Act of 1925 or S.96 of the Act of 1961. The first indication of this being the right construction, is discernible in sub-section (2) of Sec.96 which states that when any question

arises whether for the purposes of sub-section (1) a matter referred to for decision is a dispute or not, the question shall be considered by the Registrar, whose decision shall be final. This means, it is incumbent on the Registrar to decide as a preliminary issue, whether the dispute is of a kind under sub-section(1) of Section 96 falling within his jurisdiction. If this preliminary issue is found in the negative, he will have no further jurisdiction to deal with the matter."

"34. In this connection, it may be noticed that just as in Section 96(1), in Section 61 of the Andhra Pradesh Co-operative Societies Act, 1964, also, which came up for consideration in Co-operative Central Bank's case (AIR 1970 SC 245) before this Court, the term management does occur in the collocation of words 'constitution, management or business'. But no specific argument seems to have been then raised that a dispute between the Society and its former servants relating to the conditions of service, comes within the

purview of the expression 'touching the management of the Society'. Perhaps, it was taken for granted that if the dispute was not comprehended by the expression 'business of the Society', it would not be covered by the words 'management of the Society', either. Although there is little discussion in the judgment about the ambit and import of the expression 'management', yet, in conclusion, it was clearly and emphatically held that the dispute in that case was 'outside the scope of Section 61.'"

"**35.** We will now, focus attention on the expression 'management of the Society' used in Section 96(1) of the Act of 1961. Grammatically, one meaning of the term 'management' is: 'the Board of Directors' or 'the apex body' or Executive Committee at the helm which guides, regulates, supervises, directs and controls the affairs of the Society'. In this sense, it may not include the individuals who under the overall control of that governing body or Committee, run the day-to-day

business of the Society. (See words and Phrases by West Publishing Co., Permanent Edition, Vol.26, page 357, citing, Warner & Swasey CO. v. Rusterholz D.C.Minn 41 F. Supp 398, 505). Another meaning of the term 'management', may be: 'the act or acts of managing or governing by direction, guidance, superintendence, regulation and control the affairs of a Society'.”

“37. Be that as it may, what has been directly bidden 'out-of-bounds' for the Registrar by the very scheme and object of the Act, cannot be indirectly inducted by widening the connotation of 'management'. A construction free from contexual constraints, having the effect of smuggling into the circumscribed limits of the expression 'any dispute', a dispute which from its very nature is incapable of being resolved by the Registrar, has to be eschewed. Thus considered, a dispute raised against the Society by its discharged servant claiming reliefs such as reinstatement in service with back wages, which are not enforceable in a Civil Court is

> outside the scope of the expression 'touching the management of the Society' used in Section 96 (1) of the Act of 1961, and the Registrar has no jurisdiction to deal with and determine it. Such a dispute squarely falls within the jurisdiction of the Labour Court under the B.I.R.Act."

Same view has been taken in Jallandar Transport Cooperative Society Jallandar versus Punjab State through Secretary to Government, Labour Department, AIR 1959 Punjab page 34.

From the aforesaid decisions and also in view of the facts of this case, it is clear that language employed in section 160 is giving powers to the Registrar for the purpose of securing proper implementation of cooperative production, other developmental programmes, linking and coordinating of cooperation activities such as marketing and credit and securing proper management of business of the

society, conducted in a manner detrimental to the interests of members or depositors or creditors. In view of that, none of the items specified in section 160 of the Act covers the issue about validity of appointments and validity of mode of recruitment/appointments made by society without following recruitment procedure. Section 160 of the Act must be given narrow meaning because management of society which is having number of activities carried out with the help of employees but validity of appointment of such employees or termination or retrenchment are not incorporated in the section which would give power and jurisdiction to Registrar to issue such direction to respondent no. 2 to cancel or terminate the appointments made by respondent No.2 society. Registrar cannot be permitted to do something indirectly which he cannot do directly in respect of service conditions of employees or appointments of

employees or mode of recruitment procedure as per section 160 of the Act. Therefore, it is clear that the action of Registrar to direct respondent no.2 society to cancel or terminate service of 161 employees of respondent no.2 is beyond jurisdiction and not covered by the language employed in section 160 of the Act.

44. The contention raised by Mr. Yagnik on behalf of respondent No.3 that writ petitions are not maintainable since the petitioner is having alternative remedy to challenge retrenchment notices before the industrial forum cannot be accepted because the main challenge in these petitions is the order of Registrar, Cooperative Societies dated 28th February, 2003/3rd March, 2003 and the retrenchment notices issued by respondent No.2 society are based on the said directions of Registrar Cooperative Societies. Further,

industrial forum cannot decide the legality, validity and propriety of the order/direction of respondent No.1 Registrar and it can be decided only in writ jurisdiction. Therefore, these petitions under Article 226 of Constitution of India are maintainable.

45. In Madan Mohan Sen Gupta and another versus State of West Bengal and others, AIR 1966 Calcutta 23, it has been held that the writ petition against cooperative society is maintainable. (See AK Gulamnabi Mansuri versus Janata Commercial Cooperative Bank Ltd., 1998 (2) GLH 226).

46 By placing reliance on the decision of this Court (Coram : D.N. Patel,J.) in Special Civil Application NO. 20625 of 2005 dated 29th November, 2005, it was submitted by Mr.Yagnik that this Court has prima facie come to the conclusion that the Registrar is

having power under section 160 of the Act even in case of service condition of such employee. He has also placed copy of said order before this Court and submitted that in view of that, if this court is having different view, then, it should be referred to Division Bench. I have perused said order. In said order, this court has observed as under:

> "In the facts of the present case, I am of the opinion that the Registrar has *prima-faice* power and jurisdiction to issue the notice under Section 160 of the Gujarat Cooperative Societies Act, 1961. There is no total lack of jurisdiction. Nonetheless, this question is left open for its decision, by the Registrar and for appellate authority under the Gujarat Cooperative Societies Act, 1961. At this stage, this Court is not entering into the justification of the averments made in the show cause notice dated 6th October,

> 2005. Suffice it to say that *prima - facie*, there is connection between the interest of the petitioner- society, the members, the creditors, the depositors of the petitioner-society and the additional liability.

47. From the aforesaid decision, it is clear that this Court in Special Civil Application NO. 20625 of 2005 was examining the matter at issue on prima facie consideration whereas this Court is examining the matter finally and therefore, there cannot be any question of prima facie consideration. It was merely a prima facie opinion given by the Court. There is no decision on merits of the matter. However, it is made clear that the matter which was examined by this Court (Coram : D.N. Patel,J.), the bank was having bye laws relating to recruitment procedure whereas in the case before hand, respondent society is not having bye laws relating to mode of recruitment procedure and the same have also

not been framed by the State Government under section 76 of the Act. Therefore, decision of this Court in Special Civil Application No. 20625 of 2005 dated 29th November, 2005 is not having binding effect on this court as no issue has finally examined and decided in the said matter. Law on this point is decided by Apex Court in number of cases. In the case of Union of India v. Dhanvanti Devi (1966) 6 SCC 44; (1996 AIR SCW 4020), the apex court has settled law with regard to the circumstances where a decision will constitute a binding precedence. Their Lordships observed (at pages 4024-2025 of AIR SCW):-

> "A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the

expressions which may be found there is not intended to be explosion of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. "

Their Lordships further observed:-

"Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and, therefore, Judges are to employ an intelligent technique in the use of precedents."

48. There are also certain basic infirmities

in the order of the Registrar apart from the lack of jurisdiction under section 160 of the Act. Bare perusal of the order of Registrar, Cooperative Societies makes it clear that it nowhere mentions how the appointment of petitioners is adversely affecting the business, management and constitution of the society or how it adversely affected members of the society. It does not disclose what was the adverse repercussion after the appointments of petitioners were made by respondent no.2 society to the business or activities of the society. Whole order of the Registrar, Cooperative Societies is based on an assumption that if such type of appointment is made without following recruitment procedure, then, it will adversely affect interest of members but there is no fact finding that in fact it has been adversely affected or not. There is no material on record to justify order of

Registrar. No member of respondent no. 2 society has made any grievance before Registrar in relation to such appointments made by respondent No.2 that it is adversely affecting their interest. As directed by this Court in earlier petition, question of jurisdiction was required to be decided by Registrar but that has not been decided by him while passing the order. He simply avoided it and ignored the decision on the subject of preliminary contention about his jurisdiction. Registrar has relied upon earlier order dated 31st December, 1999 but there is no estoppal against law because it would not confer jurisdiction on respondent No.1. Respondent No.2 has legal right to raise contention about jurisdiction and powers of respondent No.1 and therefore principle of estoppal is not applicable in this case. Registrar has also considered that earlier two directions issued by him on 31st

December, 1999 have not been complied with by respondent No.2 but no steps have been taken by him for non compliance by respondent no.2 from 1999 till the date of appointment made and till this date. Registrar has ignored facts given by respondent No.2 society that in all 179 employees had retired and as against 179 retiring employees, only 161 employees are recruited and that has resulted into benefit of 139 lacs to respondent no.2 society. Registrar has also ignored that these appointments were made after constitution of the staff sub committee and obtaining approval from the managing committee. Registrar has also ignored during the last seven years, number of employees are reduced and annual turn over increased to Rs.334 crores. Therefore, Registrar,Cooperative Societies has not appreciated contention raised by petitioner that the Registrar has no jurisdiction for

issuing direction against respondent No.2. Registrar has not properly appreciated letter dated 13th July, 2002 of respondent No.2 wherein all details have been given how recruitment has been made but he simply referred to it and no discussion has been made that the facts narrated in letter are wrong and contrary to record or not. Thus, question whether Registrar is having jurisdiction or not, has not been decided by him. Without deciding this issue, he simply came to the conclusion that the recruitment of 161 employees is made by respondent NO.2 without following recruitment procedure and it is against interest of affiliated society and farmers attached to the society and it is also not economic and not in the interest of society. How he came to such conclusion, for that, there was no material before him. Farmers have not made any complaint. No affiliated society has made any complaint. No

members have made any complaint. There is no complaint from managing committee or any member of general body. Registrar has not considered annual report of respondent No.2 society but he came to the conclusion that such appointments made by respondent no.2 is contrary to their moral duties which is to be performed by the respondent no.2 society. Registrar has nowhere given his findings in support of the conclusions reached by him. He has given finding that he is having jurisdiction under section 160 to decide this issue and to issue such direction to respondent No.2. There is no finding that such appointments were made by nepotism, favouritism and in arbitrary manner. The only conclusion at page 27, internal page 12 is that such appointments are not in the interest of respondent no.2 society and are also not in the interest of farmers and affiliated society and administrative

interest, thus, respondent no. 2 has failed in performing his moral obligation. This is the only finding given by Registrar, Cooperative Societies which is not in accordance with law and also in accordance with the directions issued by this Court. This Court has, in terms, directed to decide the matter or dispute or representation of association in accordance with law.

49. Registrar is being appointed under section 3(3) of the Gujarat Cooperative Societies Act. As per sub section (3) of section 3 of the Act, State Government may, by general or special order confer on a person or persons appointed under subsection (2) all or any of the powers of the Registrar under this Act. So, State Government is having power by issuing notification for appointment of Registrar under this Act. As per sub section (17) of section 2 of the Act, “Registrar” means a person appointed to be

the Registrar of Cooperative Societies under this Act and includes to the extent of the powers of the Registrar conferred on any other person under this Act, such person and includes an Additional or Joint Registrar. There is no notification issued by the State Government under sub section (3) of section 3 of the Act in favour of Joint Registrar (Commerce) who has heard respective parties and submitted his report to Registrar, Cooperative Societies, Gujarat State. So, Joint Registrar is not appointed by the State Government by issuing notification under section 3(3) of the Act, therefore, Joint Registrar (Commerce) who has heard the matters has no jurisdiction to hear respective parties and he was not a Registrar within the meaning of section 2(17) read with section 3(3) of the Act. Since directions were issued by this Court to Registrar to hear affected parties, Registrar should not

have directed the Joint Registrar to hear matter of respective parties including affected persons. Such delegation of power by Registrar is without authority in law because Registrar has no power to appoint any other person as Registrar in his place. Therefore, directions issued by this Court have been clearly violated when the matter was heard by Joint Registrar (Commerce), therefore, entire hearing given by Joint Registrar (Commerce)to the affected parties is vitiated for want of power and jurisdiction as Registrar under section 3(3) of the Act.

50. The Registrar, Cooperative Societies, who is appointed under sub section (3) of section 3 of the Act is having power as conferred by the State Government in the Notification. The Registrar, in cooperative movement, has following powers under this Act.

1. To register or refuse to register society and the bye-laws and every

amendment of such bye-laws;

2. To amalgamate, divide or re-organize societies;
3. To cancel registration certificate;
4. To decide admission of members;
5. To permit payment of the share capital in excess of the limit;
6. To call special general meeting of a society;
7. To rescind certain resolutions of the society;
8. To decide disqualification of member of the committee;
9. To remove the committee and appoint an administration;
10. To apply for securing possession of records;
11. To sanction loan to another co-operative society;
12. To do work relating to audit, inquiry, inspection and supervision;
13. To refer disputes to a nominee or Board of Nominees;
14. To wound up the society, appoint liquidator and terminate the winding up proceedings;
15. To permit a co-operative bank to

function as a Land Development Bank;

16. To work as trustee; if appointed by the Government, of the State Land Development bank and to perform such functions of the trustee as enumerated under Chapter XI;

17. To distrain and sale the produce of the land mortgaged to the Land Development Bank to permit sale of such mortgaged land by public auction, and to approve such sale;

18. To grant certificate for the recovery of arrears in respect of land Development bank or to direct conditional attachment of the property of the mortgager;

19. To pass orders regarding execution of Awards, Decrees, orders and decisions;

20. To hear appeals and to call for proceedings of subordinate officers and to pass orders thereon;

21. To order for prosecution of persons under Section 10;

22. To function as Civil Court;

23. To grant leave to file a suit in civil or revenue Court while the society

is being would up, and

24. To permit societies to open branches outside the State and to permit societies of other States to open branches in this State.

These are the powers of Registrar enumerated as above wherein there is no power with the Registrar to interfere with the private management affairs of society in respect of mode of recruitment and appointments made by the Society. The Joint Registrar if not conferred powers by the State Government by issuing separate notification to exercise power of Registrar, then Joint Registrar cannot act as a Registrar as if appointed by the State Government by issuing notification under section 3(3) of the Act. This question has been examined by the Division Bench of Madhya Pradesh High Court in Dukhram Gupta v. Cooperative Agricultural Association Ltd., Kawardha and others, reported in AIR 1960 MP

273. Relevant observations made by Madhya Pradesh High Court in para 8, 9 are reproduced as under:

> 8. The real and substantial ground of attack against the validity of the resolution is that under bye-law No.38 the resolution required the approval of the Registrar but the resolution passed by Managing Committee on 3rd August,1958 dismissing the petitioner was approved not by the Registrar but by opponent No.3, the Officer on Special Duty, who was the Joint Registrar. It is not now disputed by the opponents that the resolution was approved by the Joint Registrar and not by the Registrar.
>
> But the contention advanced on behalf of the opponents is that the approval of the resolution by the Joint Registrar was valid for the purposes of bye-law No.38 inasmuch as under S.3 of the Cooperative Societies Act,1912, the State Government has power to appoint persons to assist the Registrar and to confer on them

by general or special order all or any of the powers of the Registrar under the Act; that by the notification alluded to above in paragraph 5 of the Joint Registrar was invested with all the powers of the Registrar under the Act and the Rules framed thereunder; and that the bye-laws are a part of the Act.

9. We are unable to accede to the contention that the Joint Registrar was competent under bye-law No.38 to accord approval to the resolution of the Managing Committee dismissing the petitioner. Under the said bye-law, the approval has to be of the Registrar. In the bye-laws of the Association, there is no provision permitting the Government or the Registrar to delegate any other authority the power of the Registrar under bye-law No.38. It is true that under S.3 of the Co-operative Societies Act,1912, it is open to the State Government to appoint a Joint Registrar to assist the Registrar and to confer on him all or any of the

powers of the Registrar under the Act. The section speaks of the conferment of powers of the Registrar under the Act only and not under the bye-laws framed under Section 43(2)(c) of the Act. The notification which was issued by the State Government on 13.6.1956, also conferred on the Joint Registrar all the powers of the Registrar under the Act and the rules framed thereunder. It did not proceed to confer on him the powers of the Registrar under the bye-laws. There is a distinction between an Act, the rules framed thereunder and the bye-laws framed by an authority by virtue of the power conferred on it by the Act. We shall not attempt to define a bye-law or to indicate the limits of its operation. Several statutes give to the local authorities the power to enact bye-laws for good rule, administration and government. They cover enormous variety of subjects. But all the bye-laws derive their authority from the statute or the rules made thereunder which give power to the local

authority to make them. Bye-laws are thus orders and regulations made by some authority clothed with the necessary statutory power for the regulation of its actions and concerns. They are rules of a corporation or an association or any authority for its administration and government. In Kruse v. Johnson,1898-2 QB 91, Lord Russel C.J., pointed out the characteristics of a bye-law made by a public body such as a Country Council under the Local Government Act,1888. He described a bye-law made by a County Council prohibiting any person from playing music or singing in any public place as an ordinance affecting the public, or some portion of the public to impose by some authority clothed with statutory powers ordering something to be done or not to be done, an accompanied by some sanction or penalty for its non-observance. He added that a bye-law, if validity made, has the force of law within the sphere of its legitimate operation. "

Relevant observations in para 11 reads as under:

"11.....If, as we think, the expression "under the Act" occurring in S.3 of the Act cannot be read as meaning under the Act and the bye-laws framed by the registered societies thereunder, then the investment of the Joint Registrar by the Government with all the powers of the Registrar under the Act and the notification issued on 13th June,1956 cannot make the approval given by the Joint Registrar to the resolution of the Managing Committee a valid approval under bye-law No.38. The resolution, in pursuance of which the petitioner was dismissed from service, must, therefore, be held to be illegal, and the order of dismissal of the petitioner must be held to be bad."

51. Therefore, looking to the facts of the present case, when this Court directed Registrar to decide representation which was submitted by Respondent No.3 Association,

then, it was duty of the Registrar to personally hear respective parties and to decide matter in accordance with law but instead of that, he directed Joint Registrar (Commerce) to hear objections/contentions to be raised by the respective parties and to submit his report to Registrar. Therefore, Joint Registrar (Commerce) who heard matter and submitted report to Registrar is not a Registrar appointed by State Government while issuing notification under section 3(3) of the Act, therefore, hearing authority is not Registrar within the meaning of section 3(3) of the Act, therefore, Joint Registrar has no jurisdiction to hear matter and affected parties including Respondent No.2 society and submit his report to Registrar, therefore, that hearing by Joint Registrar is without jurisdiction and vitiated.

52. Registrar is having powers which will be

exercised by him subject to general superintendence and control of Registrar. Such superintendence and control may be exercised in judicial and non judicial matters. Registrar may call for and examine record of any inquiry or proceedings of any other matter of any officer subordinate to him for the purpose of satisfying himself as to the legality of any decision or order passed and as to the regularity of the proceedings of such officer. Such decision or order may be modified, annulled or reversed by Registrar under section 107 of the Act. Such Registrar is, no doubt, head of the subordinate officers appointed to assist him but he is not head of the cooperative societies. Co-operative societies are, no doubt, a creation of the Statute just like any other Joint Stock Company. Registrar is given certain powers of general supervision over the societies and he has power to hold

inquiry into the constitution, working and financial condition of the society but these powers can only be exercised in cases where entire working of the society is defective or where interests of share holders and those who have to deal with the society are to be protected. Registrar cannot be deemed to be a Head of the Cooperative Societies and should not be deemed to have power to interfere in the matters of appointments and dismissal of its employees.

53. This aspect has been examined by Allahabad High Court in case of Dalel Singh v. Coop. Union Ltd. UP Lucknow and others, reported in AIR 1956 Allahabad page 43. Para 4 of judgment being relevant, is reproduced as under:

> Learned counsel for the applicant had urged that the co-operative society is a statutory body and the Registrar has wide powers of interference with the

administration of the Co-operative Societies. Therefore, the Registrar should be deemed to be the head of the Co-operative Society and he should be deemed to have power to interfere in the matters of appointments and dismissals also. I do not think that this proposition is tenable. Co-operative Societies are no doubt a creation of the statute just like any other joint stock company.

The Registrar is given certain powers of general supervision over the societies and he has power either of his own motion or at the request of the Collector or a majority of the committee or of not less than one third of the members to hold an inquiry or direct some person authorized by him to hold inquiry in the constitution. Working and financial condition of the Society.

This power can only be exercised in cases where the entire working of the Society is defective and this power has been given to protect the interests of the shareholders and those who have to deal with the Society.

This does not mean that the Registrar has

power to interfere in the day to day administration of the Society. Besides S.35, no other section was brought to my notice where the Registrar had any other greater power. The State Government has still less power to do anything in the matter. There is nothing which the Registrar or the Assistant Registrar or the State should have done and which they have failed to do, and, therefore, as I have indicated above, the petition against the Registrar or the State Government is misconceived.

54 In view of the above observations made by Allahabad High Court, when State Government is having no power to interfere with the private management affairs of society in respect of mode of recruitment and appointments of employees of the society, then, Registrar has no power to interfere in the day to day administration of societies and except section 160 of the Act, there is no any other greater power under the Act

given to the Registrar which can interfere with the private management affairs of the society. In the facts of this case, it is not the case of Registrar that entire working of the society is found to be defective or interests of members/farmers are required to be protected. There is no such finding given by Registrar while passing impugned order.

55. While interpreting section 96, constitution of society, management and business has been interpreted by apex court. Similarly,language of section 96 and 160 of Act is almost taking care of situation wherein entire working of the society is found to be defective or interests of members/share holders are required to be protected or not. These are general powers as interpreted by apex court and it cannot include power to have interference in day to day working of society and Registrar is not

head of the society. Therefore, interpretation of words "constitution, business and management of society' is also applicable to language of section 160 of societies Act. It is a settled principle that under the Act, if one section having particular language is interpreted by apex court, same interpretation is required to be considered when similar type of language is used in other statutory provisions. Under section 160, Registrar is having power to issue direction in respect of securing appropriate implementation of cooperative production, development programs approved or undertaken by the State Government, cooperative activities such as marketing and credit, proper management of the business of the society and if affairs of the society being conducted in manner detrimental to interests of members/depositors/creditors. Therefore, ultimately, Registrar is having

general supervision for protecting interests of members/farmers which does not include to have interference in the private management, day to day affairs of the society wherein the society is required to appoint employees according to its exigency and requirement. Therefore, Registrar has no power or jurisdiction to issue any direction against respondent No. 2 relating to mode of recruitment and appointment of petitioners. This is beyond the scope of section 160 of the Act. There is no finding given by the Registrar that entire working of respondent No.2 is found to be defective and interests of members/farmers are adversely affected. Order passed by Registrar and final conclusion drawn by Registrar reads as under in English:

> "Pursuant to order of Hon'ble High Court dated 16.7.02, on making inquiry of whole matter on merits, I come to the conclusion that it is established

that the recruitment of 161 employees has not been made in the larger interests of the establishment and cooperative societies affiliated with it and farmers of the State as well as long term financial and administrative interest of the establishment. It appears that the said recruitment is against the moral responsibility to be performed by GUJCOMASOL as trustee of the member cooperative societies.

Decision has administratively been taken by giving opportunity to all concerned to make representation after taking into consideration aforesaid observation and conclusion and order of Hon'ble High Court in Special Civil Application No. 6042 of 2002 wherein undersigned was ordered to pass order after examining whole matter."

56 In above conclusion, it is not concluded by Registrar that entire working of respondent No.2 society is found to be defective and interests of members/farmers are adversely affected. In absence of such finding as

referred to above, Registrar has no jurisdiction to interfere with such matter of appointment/termination of petitioners herein.

57. Respondent No.2 society has registered bye laws in No. 24090/7 dated 19th April, 1960. According to bye laws No. 50, entire administration, management and control of federation shall be vested in the board of directors and subject to control of the board in an executive committee to be constituted by the Board of Directors from amongst themselves. Item No.24 of bye laws is providing from time to time to appoint and at pleasure to remove or suspend or otherwise punish, as the Directors deem best, for the management of the business of the Federation, any officer, clerk or other employee of the Federation, to fix their remuneration, salaries and wages, to appoint such staff temporary or permanent on such remuneration as

they may deem necessary and to frame Rules for recruitment, grades and scales of pay and allowances and for their conduct and discipline. These are the powers under the existing bye laws enjoyed by the Board of Directors and interference with it by Registrar without any jurisdiction and justification is beyond the scope of section 160 of the Societies Act.

58. In identical case wherein Registrar has cancelled appointments on assumption of mal practice carried out by the society in selection and appointment in case of Benny T.D. And others etc. etc. v. Registrar, Co-operative Societies and another etc. etc., reported in AIR 1998 SC 2012, apex court observed as under in para 20, 21 and 22:

> 20. Apart from the aforesaid questions which are common on respect of recruitment in both the Banks, in case of Kottayam Bank the Division Bench of the High Court had categorically found that the recruitment itself is vitiated on

account of large scale mal-practice. It may be stated that the Registrar while issuing notice under Rule 176 of the Rules to the Board of Directors of Kottayam District Co-operative Bank by letter dated 24th of July, 1986 did not indicate about any large scale mal-practice adopted in the test conducted by the bank excepting to the effect; "The marks awarded and the consolidated marks recorded are corrected and manipulated." Some of the candidates were given less marks and some others were given higher marks. But while considering the legality of the resolutions passed by the bank appointing several persons the Registrar took into consideration the so-called report of the Kerala Public Men's (Corruption, Investigation and Inquiries) Commission who had directed to a detailed inquiry and on that basis came to the ultimate conclusion that the appointment of candidates made by the Kottayam District Co-operative Bank is vitiated. The learned Single Judge came to the conclusion, and in our opinion rightly, that in the absence of any detailed particulars of the alleged irregularities

in the notice issued to the bank under Rule 176 and in the absence of report of the Kerala Public Men's (Corruption, Investigation and Enquiries) Commission being made available to the bank or the persons appointed, it is not open to the Registrar to come to the conclusion about the irregularity and said conclusion is vitiated on account of gross violation of the principle of natural justice. The Division Bench, however, disagreed with the conclusion of the learned Single Judge on this score and relied upon the report of the Commission and came to hold that the entire selection process was vitiated by illegality and irregularity and therefore there is no other option than to cancel the appointments of all the candidates. The Division Bench was conscious of the fact that the persons to be adversely affected by the impugned decision had not been given an opportunity inasmuch as the relevant documents had not been put to them nor even to the bank who made recruitment but yet brushed aside the principle of natural justice and did not focus its attention to the same and on the other

hand came to the conclusion that the process of selection got vitiated on account of alleged irregularity and illegality. In our considered opinion the Division Bench patently committed an error in relying upon the report of the Commission and in recording a finding that irregularities have been committed in the selection notwithstanding the fact that the said report had not been made available to the Bank or to the affected parties. That apart, as stated earlier in the notice that was issued the Registrar there was no particulars given and on such vague assertions made, it was not permissible to record a conclusion that there has been any irregularity in the process of selection. The said conclusion of the Division Bench must accordingly be set aside.

21. Mr. Sukumaran the learned senior counsel relied upon the decision of this Court in, Pritpal Pal Singh v. State of Haryana, (1994) 5 SCC 695 : (1994 AIR SCW 4624), and urged that in view of the findings of the Public Inquiry Commission that there has been tampering of marks in respect of several candidates and as such

there has been no fair and objective selection, the public interest demands annulment of the entire selection and a Court should not shirk its responsibility by directing annulment of selection on the mere technicality that the Report of the said Public Inquiry Commission had not been given to the Bank or any of the persons to be affected. In the aforesaid case, selection made by the Haryana Subordinate Services Selection Board for appointment to the post of Assistant sub-Inspectors of Police was annulled by this Court on coming to a conclusion that the selection made by the Board was not objective and fair. This Court held that the matter which involved the public interest could not be treated as purely adversarial. But in the course of hearing the Court being of the opinion that the problem to be resolved was much too serious to be dealt with on adversarial contentions and in view of glaring infirmities in the process of selection which the Court noticed, all the persons including those who had been selected and appointed were directed to be duly notified, so that, the Court could decide

as to whether the entire selection process was infirm and quash the selection. To achieve the aforesaid objective, the Court had called upon the Chief Secretary to the State Government to furnish upon affidavit particulars regarding constitution of the Board, the names and qualification of its members and to produce the record and minutes of the Board's meeting. In other words, the Court complied with the principles of natural justice by giving notice to the affected parties of all the relevant materials and then on receiving explanations from those persons by way of affidavit in this Court and taking into account the contentions raised by those persons, ultimately decided the matter. The ratio of the aforesaid case will have no application to the present case inasmuch as neither the Bank nor any of the affected parties have been given a copy of the Report of Public Inquiry Commission on which Report the Registrar had relied upon as well as the Division Bench of the High Court had relied upon and came to a conclusion by relying upon such Report without giving any

opportunity to the parties concerned to have their submissions. It would tantamount to gross violation of the principle of natural justice which cannot be brushed aside on the ground that public interest demands annulment of the selection. In our opinion, the ratio of the aforesaid decision cannot be applied to the case in hand.

22. In view of our conclusions as aforesaid, we hold that the order of the Registrar in annulling the resolutions of the Trissur District Co-operative Bank Limited as well as the resolution of the District Co-operative Bank, Kottayam is vitiated with manifest error and as such the said order of the Registrar cannot be sustained and we accordingly quash the same. The judgments of the High Court passed by the learned Single Judge as well as the Division Bench in writ appeal are also erroneous and the same are therefore set aside and the writ petitions filed by the respective petitioners stand allowed. Necessarily, therefore, the appointments made to the post of Clerk by Resolution No. 2 dated 5-2-1995 and Resolution No. 10 dated 17-

5-1995 passed by the Board of Directors of Trissur District Co-operative Bank is held to be valid and similarly appointment made to the post of Clerk by Resolution Nos. 3 and 4 dated 13-4-1995 passed by the Board of Directors of District Co-operative Bank, Kottayam must be held to be valid. Civil Appeals arising out of S.L.P. (c) Nos. 9350-9352 of 1997, Civil Appeal arising out of S.L.P. (c) No. 9728 of 1997, Civil Appeals arising out of S.L.P. (c) Nos. 10149-10150 of 1997, stand allowed and Civil Appeals arising out of S.L.P. (c) Nos. 15444-15448 of 1997 filed by the State of Kerala stand dismissed but in the circumstances there will be no order as to costs.

59. In the facts of this case, Registrar who become ex-officio member of the managing committee wherein appointment of petitioners were approved by Managing Committee by passing resolution, when resolution was passed, Registrar was a member of committee being a party to the managing committee, therefore, Registrar has no jurisdiction to decide

otherwise or contrary to the resolution, Registrar is having acquiesced in the appointment and having allowed the incumbent to work for more than three years, it was not open to him to set aside the appointment. Such question was examined by apex court in The Nayagarh Cooperative Central Bank Ltd. And another v. Narayan Rath and another reported in AIR 1977 SC 112. Apex court observed as under in paragraph 4:

> "The writ petition filed by respondent No.1 could succeed, in our opinion, on the narrow ground that he had been permitted to function for over thirteen years as secretary of the Bank and that his appointment as secretary was decided upon in a meeting over which the Registrar of Cooperative Societies had himself presided. The writ petition in substance is directed not against any order passed by the Co-operative Bank but against the order passed by the Registrar disapproving the appointment of respondent No.1 as secretary of the Bank. It was not open

to the Registrar, in our opinion, to set aside respondent No.1's appointment as a secretary after having acquiesced in it and after having for all practical purposes, accepted the appointment as valid. It is undesirable that appointments should be invalidated in this manner after a lapse of several years. "

60. The Joint Registrar and Registrar both waited for more than two months for initiating inquiry as per directions issued by this Court. Lastly, very hurriedly decided matters pointing out clue of having directions of this Court to decide matter within time bound schedule. From perusal of the record, it is clear that no reasonable opportunity was given to concerned employees who were likely to be affected by such directions by Registrar. No accommodation was given for hearing and hurriedly matter was concluded within the period of fifteen days though time of three months was granted by this Court. Petition was disposed of by this Court by order dated 16.7.2002. Copy of representation made by Association was not given to the employees at the time when the employees were called upon to submit explanation by issuing show cause

notice dated 25th October, 2002 to show cause why order under section 160 of the Act should not be passed. Though such show cause notice was issued pursuant to representation made by the Association, copy of that representation was not supplied either to affected employees or to respondent NO.2 by Registrar, Cooperative Societies and this is, therefore, a clear case of denial of reasonable opportunity to concerned petitioners as they were deprived to show cause effectively why order under section 160 should not be passed. This caused great prejudice to concerned petitioners. In absence of representation of respondent No. 3 on what basis or material, petitioners can give reply. This created clear denial of effective opportunity. The reasonable opportunity is not merely formality but in substance it must have to strict compliance. The order of Registrar, Cooperative Societies is, therefore, suffering from the vice of non compliance of natural justice. Report of finding recorded by Joint Registrar (Commerce) was submitted by Joint Registrar (Commerce) to Registrar Cooperative Societies and on that basis, Registrar, Cooperative Societies passed order in question but before passing such order, copy of report

submitted by Joint Registrar (Commerce) was not supplied to petitioners concerned and they were not called upon to submit as to why such report should not be believed by him for passing order under section 160 of the Act. This is also clear denial of reasonable opportunity. Therefore, whole inquiry and decision of Registrar, Cooperative Societies is contrary to the principles of natural justice and the finding given by the Registrar, Cooperative Societies is vitiated as baseless and perverse as well as contrary to the record. Conclusion of the Registrar is not based upon the material produced by the parties and is based on extraneous consideration, conjectures and surmises. There is no finding on factual aspects whether in fact any adverse thing has been done by the employees appointed by the society.

61. Registrar, Cooperative Societies has also not disclosed as to what report was submitted by the Joint Registrar (Commerce) before him. Report submitted by Joint Registrar (Commerce) to Registrar, Cooperative Societies has also not been produced before

this Court for perusal by Respondent No.1. Registrar, Cooperative Societies has not at all discussed the same, therefore, it amounts to non application of mind on the part of Registrar, Cooperative Societies. Registrar, Cooperative Societies has not considered submissions of respondent NO.2 to the effect that from very inception, respondent No. 2 is no service bye laws or recruitment rules framed by the State Government, therefore, in absence of service bye laws and recruitment rules, respondent NO.2 is appointing employees by appointment of sub committee who will take interview and made selection which was ultimately approved by the Managing Committee. In this fashion, all employees those who are working with respondent No.2 were appointed. It is the submission of Mr. Joshi on behalf of respondent No.2 that the person who is representing association, respondent NO.3 and filed petition raising

grievance against appointment of petitioners was also appointed in the same manner and fashion in which petitioners were appointed. So, this is a very hard issue and real facts were brought to the notice of the Registrar, Cooperative Societies that each and every employees working with respondent NO.2 were appointed in the same manner as 161 employees were appointed, therefore, in such circumstances, it was the duty of Registrar, Cooperative Societies to consider fact that person who is raising grievance against appointment of 161 employees that in their case also procedure has not been followed then, Registrar, Cooperative Societies ought to have considered that in similar manner, person representing and having grievance of association was appointed. That apparently proved mala fide intention and ulterior oblique motive to challenge appointments of 161 employees. Therefore, in the facts and

circumstances of the case, when there is no statutory rules or service bye laws in existence, method and mode which was adopted by respondent No. 2 by appointing sub committee to take interview and make selection of 161 employees cannot be considered to be unreasonable process or arbitrary process. This procedure is also known to law. Unless and until there is concrete evidence of corruption, nepotism and favoritism as alleged,no action whatsoever could be taken against concerned employee in absence of direct and concrete material. This aspect has also been ignored by Registrar while dealing with this sensitive issue of employees about 161 in number whose services were to be terminated by exercise of the powers under section 160 of the Societies Act. Therefore, it is clear that the Registrar, Cooperative Societies has passed order in question without considering reply

of respondent No.2 wherein hard reality was disclosed by respondent No.2.

62. The Registrar has not made any allegations of mal-practice, corruption and that incompetent persons were selected and appointed by Respondent No.2 Society. The Registrar has not given any finding about mal practice, corruption and incompetent persons were selected and appointed by respondent No.2 society. There is no finding given by Registrar that petitioners are not qualified to the post in which they were appointed. It is not in dispute that Managing Committee has appointed Sub Committee and interviews of petitioners were taken and then selection was made which was approved by authorized and competent managing committee. It is not the case of Respondent No.3 that petitioners are not working satisfactorily. It is also not the case of Respondent No.3 that petitioners

are working against the interest of society and members/farmers. It is also not the case of Respondent No.3 that due to said appointments of petitioners, Respondent NO.2 society has incurred loss in their business, meaning thereby, whatever loss incurred is not due to appointment of petitioners. Petitioners are not responsible for said loss incurred by respondent No.2 society. It is also not the case of Respondent No.3 association that there is no set up or vacancies available for petitioners. The post in which petitioners are appointed found to be vacant and covered within sanctioned set up in the society. There is no contrary material on record produced by Respondent No.3 association and no contrary finding has been given by Registrar. There is no mandate given to society under statutory Rules or bye laws that recruitment of employee has to be made in a particular manner. There is no

statutory compulsion upon society to fill up the post in a particular manner. The State Government has also no power over society respondent no.2 under section 155 of the Act to appoint petitioners in a particular manner or manner in which petitioners are appointed is wrong or illegal or irregular. The State Government has no power to interfere in day to day function and affairs of management of society. Then, naturally, Registrar who is appointed by the State Government cannot have such power to interfere with the functions and affairs of management of society. There is no back door entry of petitioners in service. The petitioners are appointed after following procedure, to have qualification of post, interviews were taken and then selection was made by Sub Committee which was approved by Managing Committee. Thereafter, petitioners were appointed. It is not finding of Registrar that petitioners are surplus

staff appointed by respondent NO.2 Society beyond sanctioned set up. The respondent NO.2 has made clear before the Registrar that in all 179 employees retired from service and against that, only 161 employees are appointed. So, petitioners are not surplus persons appointed by respondent NO.2 society incurred unnecessary financial burden upon society. So, appointments of petitioners are in larger interest of society. These aspects have not been taken into consideration by Registrar while issuing impugned directions to respondent NO.2.

64. Decisions cited at Bar by the learned advocates for the respective parties have been considered by me and considering the law laid down in such decisions, I have decided the matter at issue in this petition. In light of the facts of the case and the law referred to herein above, contentions raised

by Mr. Yagnik on behalf of respondent No.3 association and by Mr. A.D.Oza, learned GP and Mr. Mukesh Patel, learned AGP on behalf of respondents No.1 and 4 cannot be accepted and are, therefore, rejected. Machinery under the Industrial Disputes Act cannot examine legality, validity and propriety of the directions issued by respondent No.1 to respondent NO.2 while examining retrenchment notices. Therefore, remedy under the ID Act cannot be considered to be equally efficacious remedy. Action of respondent No.1 is bad in law for want of powers under section 160 of the Act. Action in question is also violative of the principles of natural justice as stated earlier and, therefore, same is required to be quashed and set aside.

65. In result, these petitions are allowed. Order of Registrar, Cooperative Societies, Gujarat State dated 28th February, 2003 / 3rd

March, 2003 is beyond the scope of section 160 of Act and without jurisdiction and contrary to the principles of natural justice, therefore, it is quashed.

66. Notice of retrenchment issued by respondent No. 2 to concerned petitioners in this group of petitions is also hereby quashed. Rule is made absolute in terms indicated herein above with no order as to costs.

(H.K. Rathod,J.)

Vyas